# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1964**

## No. 527

THE HANNA MINING COMPANY, ET AL., PETITIONERS,

*vs.*

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

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## IN THE SUPREME COURT OF WISCONSIN

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THE HANNA MINING COMPANY, NATIONAL STEEL CORPORATION, HANSAND STEAMSHIP CORPORATION and THE HANNA FURNACE CORPORATION, Appellants,

v.

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, Respondents.

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[fol. 1]

### Appellants' Appendix

IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

MEMORANDUM OPINION—July 25, 1963

The dispute in the above case arose from the picketing of an ore carrying boat in the harbor of Superior, Wisconsin. The operator of the boat is the Hanna Mining Company, a Delaware Corporation with its principal office and place of business at 1300 Leader Building, Cleveland 14, Ohio, and the organization doing the picketing was District 2 of the Marine Engineers Beneficial Association, AFL-CIO, 190 21st Street, Brooklyn 32, New York, an unincorporated association. Said association, hereinafter designated "MEBA," has been picketing all boats owned by said Hanna Company wherever they appear on the Great Lakes since September of 1962. All unlicensed personnel employed by the Hanna Company are represented by the United States Steel Workers of America, Local 7000, AFL-CIO, and they are not involved in this matter and apparently take no cognizance of the picketing by MEBA. The object of the picketing by MEBA is to organize the licensed personnel on Hanna boats, the engineers.

On the 25th day of June, 1963, an order was issued by this Court temporarily restraining said picketing, said or-
[fol. 2] der being returnable at 10:00 o'clock on the 1st day of July, 1963. The hearing on said matter was postponed by agreement of counsel to the 8th day of July, 1963, at 10:00 o'clock a. m. and on said date argument was held, the plaintiffs being represented by Johnson, Fritschler, Barstow and Witkin, Superior, Wisconsin, by B. B. Barstow and Paul Witkin, Montague, Applequist, Lyons, Nolan, Donovan and Kretsch, Duluth, Minnesota, by Kermit Kretsch, and by Hanninen, McGreary, Hinslea and Ray, Cleveland, Ohio, by John Hanninen. The defendants were represented by Borg, McGill and Moodie, Superior, Wisconsin, by P. G. McGill, and by Pressman and Scribner of New York, New York, by David Scribner.

The first issue to be decided in this case, as it is in every case in which a state court is involved in a labor matter, is whether the state court has jurisdiction over the matter at all, or whether the matter is within the jurisdiction of the National Labor Relations Board, and the argument had on July 8, 1963, was restricted to such point. The facts in this case to begin with seem to be very similar to the facts in Marine Engineers Beneficial Association vs. Interlake Steamship Company, 370 U. S. 173, decided by the Supreme
[fol. 3] Court on June 11, 1962. That was a case in which the same defendant as here involved was picketing a ship in the harbor in Duluth, Minnesota in the same manner as was done in this case. The District Court in Duluth issued a restraining order restraining such picketing just as was done in this case. The union appealed the case to the Minnesota Supreme Court and the Minnesota Supreme Court affirmed the lower court. The Minnesota court reasoned that the matter was not within the jurisdiction of the National Labor Relations Board because the persons that MEBA was trying to organize were not employees but were supervisors within the meaning of the National Labor Relations Act, and the National Labor Relations Act does not apply to supervisors. The union appealed the

case to the United States Supreme Court and the United States Supreme Court reversed the Minnesota court. In its reversal the United States Supreme Court quoted extensively from the case of San Diego Building Trades Council vs. Garmon, 3 L. Ed. 2d 775, decided January 20, 1959, in which the court had stated that if any matter was arguably within the jurisdiction of the National Labor Relations Board, then the state court should defer to the National Labor Relations Board, and the initial determination [fol. 4] as to whether such matter was or was not within the jurisdiction of the National Labor Relations Board should be determined by the Board. The court said that because of the fact that plaintiff below had alleged the violations of Section 8(b) (4) of the Act, the provision prohibiting secondary boycotts, such matter might be within the jurisdiction of the National Labor Relations Board. This was because, even though the persons that MEBA was attempting to organize in this particular case were all supervisors, MEBA did have certain members at other locations that were employees, so that MEBA was a labor organization within the meaning of the Act, and any violation of Section 8(b) (4) by a labor organization did come within the jurisdiction of the National Labor Relations Board.

Now we get to the difference between this case and the Minnesota case. The plaintiff in this case tried to follow the advice of the Supreme Court in the Minnesota case. When MEBA began picketing its ships in September of 1962, the plaintiff Hanna Mining Company did not come directly to the state court. It filed charges with the National Labor Relations Board. In fact, it filed two different charges with the National Labor Relations Board, one al- [fol. 5] leging that MEBA had violated Section 8 (b) (4) of the Act and a second, that MEBA had violated Section 8 (b) (7) of the Act, a provision which prohibits organizational picketing except in certain circumstances specified in the Act.

The National Labor Relations Board dismissed the petition alleging violation of Section 8 (b) (4) of the Act, stat-

ing that the activities alleged by MEBA did not violate such section. The National Labor Relations Board also refused to issue a complaint for a violation of Section 8 (b) (7) of the Act, but the reason they gave for failure to issue a complaint in this case was that they could not do so for the reason that the persons MEBA was attempting to organize were all supervisors. They stated that they did not consider whether the particular acts alleged would have been a violation of Section 8 (b) (7) if the persons that MEBA was attempting to organize had been employees, but such persons being supervisors, they were dismissing the complaint. At the time the original restraining order was issued, the Court thought that this declination to act by the Board gave the state court jurisdiction in a case involving supervisors, but after studying labor cases for two weeks, the matter does not appear so simple. The [fol. 6] fact that the National Labor Relations Board declined to act in a particular case does not necessarily give the state court jurisdiction. Further, we do not know the facts in the present case are exactly the same as the case which the National Labor Relations Board investigated in the Fall of 1962 before it issued such order. The complaint in this case, at least, "arguably," alleges facts which would be a secondary boycott, which are within the jurisdiction of the National Labor Relations Board.

The United States Supreme Court has said repeatedly that the state courts should stay out of labor disputes in any case in which there was a possibility that the National Labor Relations Board might have jurisdiction thereof. This means in effect that the state court must stay out of any labor dispute affecting interstate commerce, as this dispute clearly does, unless the United States Supreme Court or the National Labor Relations Board has clearly indicated that the state court may act. The last word from the United States Supreme Court on a matter similar to this is the Minnesota case cited above decided June 11, 1962, in which case the United States Supreme Court said the state court should stay out. The Court cannot say that

the National Labor Relations Board's action since that date [fol. 7] has been so definite and certain as to give the state court jurisdiction in this case.

Therefore, it is determined that the Court does not have jurisdiction in this case, and the restraining order must be vacated and the complaint dismissed with costs. Attorneys for defendants may draw the order.

Dated July 25, 1963.

By the Court: Allen Kinney, Circuit Judge.

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IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

ORDER FROM WHICH APPEAL IS TAKEN—July 26, 1963

The above entitled matter having come before the Court pursuant to an Order to Show Cause herein dated June 25, 1963, and an Order having been thereon issued by this Court temporarily restraining picketing alleged in the Petition, Affidavits and Complaint on file herein, and said Order being returnable on July 1, 1963, and adjourned by Stipulation to July 8, 1963, on which date plaintiffs having appeared by Johnson, Fritschler, Barstow & Witkin of Superior, Wisconsin, by B. B. Barstow and Paul Witkin, and Montague, Applequist, Lyons, Nolan, Donovan and [fol. 8] Knetsch of Duluth, Minnesota, by Kermit Knetsch, and by Hanninen, McGreary, Hinslea and Ray, Cleveland, Ohio, by John Hanninen, and the defendants specially appearing by Borg, McGill & Moodie of Superior, Wisconsin, by P. G. McGill, and by Pressman and Scribner of New York, New York, by David Scribner, and Motion having been filed by the defendants to dismiss the Complaint and to vacate the temporary restraining order, and the Court having read the Affidavits of the parties and having heard the arguments of counsel and being fully informed in the premises, and the Court having filed its Memorandum Opinion herein, the same having been served on the representative counsel, and the Court finding that the matter now before the Court is within the jurisdiction of the National Labor Relations Board and that this Court is without jurisdiction;

It Is Ordered that the Motion of the defendants to dismiss plaintiff's Complaint is granted and plaintiffs' Complaint is dismissed with costs to defendants.

It Is Further Ordered that the plaintiff's application for a restraining order be and the same is hereby denied.

It Is Further Ordered that the temporary restraining [fol. 9] order issued by this Court on June 25, 1963, be and the same is hereby vacated for all purposes.

Dated July 26, 1963.

By the Court, Allen Kinney, Judge.

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IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

ORIGINAL COMPLAINT

Now comes The Hanna Mining Company, National Steel Corporation, The Hansand Steamship Corporation and The Hanna Furnace Corporation, plaintiffs herein, by Johnson, Fritschler, Barstow & Witkin, their attorneys, and for their complaint respectfully state:

I.

Plaintiff The Hanna Mining Company is a corporation organized and existing under the laws of the State of Delaware with a principal office and place of business at 1300 Leader Building, Cleveland 14, Ohio, and it owns and operates vessels on the Great Lakes and tributary waters engaged in the business of transporting cargos in interstate and foreign commerce; The Hanna Mining Company is the authorized and designated vessel operating agent for plaintiff National Steel Corporation, a corporation of the [fol. 10] State of Delaware, The Hansand Steamship Corporation, a corporation of the State of Delaware, and The Hanna Furnace Corporation, a corporation of the State of New York, which also owns vessels on the Great Lakes engaged in the business of transporting cargos in interstate and foreign commerce. The aforesaid vessels are operated

as one integrated fleet by plaintiff The Hanna Mining Company as the vessel operating agent.

The officers and crew members employed on plaintiffs' vessels are assigned interchangeably without regard to the ownership of the vessels by plaintiff The Hanna Mining Company as one of its duties or functions as the designated vessel operating agent. Marine engineers licensed by the United States Coast Guard are employed by plaintiffs on the said vessels to operate and maintain the engines, boilers and other machinery and to direct and supervise the work of unlicensed crew members in the performance of such work in the Engine Department of each vessel.

## II.

Defendant District 2, Marine Engineers Beneficial Association is an unincorporated association affiliated with the AFL-CIO and has a principal office and place of busi- [fol. 11] ness at 190 21st Street, Brooklyn 32, New York. The President and Chief Executive Officer of said District 2 is Raymond T. McKay whose office is located at its principal place of business in Brooklyn, New York.

The Secretary-Treasurer and Assistant Business Manager of said District 2 is Melvin H. Pelfrey who maintains an office at 120 Summit Street, Toledo 4, Ohio.

The Vice President and Assistant Business Manager of said District 2 is Charles E. LaPorte who maintains an office at 312 West 2nd Street, Duluth, Minnesota.

Frank Leckie is a representative of the said District 2 employed at 512 West 2nd Street, Duluth 2, Minnesota.

The said District 2 is a labor union with a membership composed of licensed marine engineers and has a number of officers, representatives, employees and places of business in various locations; it now has several representatives, agents and employees engaged in picketing activities at the ore loading docks of the Great Northern Railway Company at Superior, Wisconsin directed against plaintiffs' vessels which use these docks for loading cargos.

[fol. 12]

III.

That effective October 4, 1961, plaintiff The Hanna Mining Company, for itself and as agent on behalf of the other plaintiffs as their vessel operating agent, entered into a labor agreement with defendant District 2, Marine Engineers Beneficial Association, governing the wages, working conditions and terms of employment of licensed marine engineers employed aboard plaintiffs' vessels; that the said labor agreement terminated on July 15, 1962; that during negotiations for a new labor agreement between representatives of plaintiff The Hanna Mining Company and said District 2 in August 1962, a vast majority of the said engineers signed petitions stating that they do not want to be represented for collective bargaining by said District 2 and forwarded such petitions to plaintiff The Hanna Mining Company; that plaintiffs immediately notified said District 2 that said written petitions had been received revoking the authority of said District 2 to act as the collective bargaining agent or union representative for the said engineers; and that any further collective bargaining negotiations should be suspended and held in abeyance until said District 2 established its legal right to represent the said engineers, or a majority of them, preferably by means [fol. 13] of a secret ballot election conducted by an impartial third party which would provide the said engineers an opportunity to vote for or against representation by said District 2.

IV.

That defendant District 2 refused to agree to any election by an impartial third party to resolve the said question of representation and determine its majority status; that defendant District 2 demanded a continuation of collective bargaining negotiations and the execution of a labor agreement binding the said engineers and governing their wages, working conditions and all terms of employment including compulsory union membership notwithstanding the

petitions from the said engineers; that upon the refusal of the plaintiffs to accede to their demands, said District 2 and its officers, agents, employees, members and representatives commenced picketing plaintiffs' vessels on September 12, 1962, in Superior, Wisconsin, and many other Great Lakes Ports with the unlawful objectives of forcing, coercing and compelling plaintiffs to recognize and bargain with the defendants as the union representative of the said engineers and forcing, coercing and compelling the said engineers to join, accept and select the said District 2 as [fol. 14] their collective bargaining representative without any opportunity to determine whether or not defendant labor union represented a majority of the said engineers by means of a properly conducted election; that defendant District 2 and its officers, employees, agents and representatives continued picketing plaintiffs' vessels until December 1962 when Great Lakes navigation ceased for the winter; that such picketing was resumed in the latter part of April 1963 in Superior, Wisconsin at the commencement of navigation with the same unlawful objectives and such picketing is continuing; and that none of the said engineers employed on plaintiffs' vessels have participated in any of these picketing activities and have continued working steadily without any work stoppages of any kind on plaintiffs' vessels.

V.

That plaintiffs filed a petition with the Regional Director of the National Labor Relations Board in Cleveland, Ohio, on September 12, 1962, amended September 17, 1962, Case 8-RM-308, requesting a representation election to determine whether or not defendant labor union represented a majority of the said engineers; that the said Regional Director dismissed the petition on September 25, 1962, upon [fol. 15] a finding that the said engineers were supervisors excluded from the coverage of the National Labor Relations Act and therefore not within the jurisdiction of the said Board; that said ruling of the Regional Director was

affirmed upon appeal by the National Labor Relations Board, Washington, D. C. on a finding that the said engineers were supervisors to whom the National Labor Relations Act does not apply.

VI.

That on September 15, 1962, plaintiffs filed charges against defendant District 2 with the Regional Director of the National Labor Relations Board in Minneapolis, Minnesota, for a possible violation of Section 8 (b) (4) of the National Labor Relations Act for picketing activities creating work stoppages delaying the unloading of cargo from the SS. Joseph H. Thompson, one of Plaintiffs' vessels, at Duluth, Minnesota; that said charges were dismissed on October 22, 1962; and that said dismissal was affirmed upon appeal by the National Labor Relations Board at Washington, D. C. on December 10, 1962.

VII.

That on September 27, 1962, plaintiffs filed a charge against defendant District 2 with the Regional Director of [fol. 16] the National Labor Relations Board in Cleveland, Ohio, for a violation of Section 8 (b) (7) of the National Labor Relations Act for continued picketing of plaintiffs' vessels with the unlawful object of forcing or requiring the plaintiffs to recognize or bargain with defendant District 2 as the representative of said engineers, or forcing or requiring the said engineers to accept or select defendant District 2 as their collective bargaining representative; that said Regional Director dismissed plaintiffs' charges on October 5, 1962; that plaintiffs immediately appealed the said dismissal to the General Counsel of the National Labor Relations Board in Washington, D. C.; that said dismissal was affirmed by the General Counsel by letters dated November 26, 1962 and December 21, 1962, upon the ground that the said engineers are supervisors over whom the said Board has no jurisdiction because the National Labor Relations Act specifically excludes supervisory per-

sonnel from its provisions; and that the administrative dismissal of the plaintiffs' charges was in accordance with the established practice of the said Board.

VIII.

That unless enjoined and restrained from continuing such picketing activities, defendant District 2, Marine En- [fol. 17] gineers Beneficial Association, AFL-CIO, and its officers, agents, members, employees and affiliated labor unions will continue to picket plaintiffs' vessels with the unlawful objectives of coercing, forcing and compelling plaintiffs to recognize and execute a labor contract with the said District 2 as the purported representative of the said engineers and to force the said engineers to accept and select said District 2 as the collective bargaining agent and union representative for said engineers, to cause work stoppages among dock employees, to prevent harbor tugs from rendering towage services, to cause delays in the sailings of plaintiffs' vessels and to cause other economic loss and harm; that plaintiffs have suffered irreparable damage; that plaintiffs have no adequate remedy at law; and that the National Labor Relations Board administering the federal National Labor Relations Act and amendments thereto has declined and refused to take any jurisdiction over this controversy because the said Board has ruled that the licensed marine engineers employed aboard plaintiffs' vessels are supervisors to whom the said Act does not apply.

IX.

That none of the said engineers have participated in any of the picketing activities which have been and are being [fol. 18] conducted by defendants; that the said engineers have remained aboard plaintiffs' vessels performing their regular duties without any work stoppages or interruptions despite the picketing activities conducted by defendants; that no labor dispute exists between the plaintiffs and the said engineers; and that all picketing by

defendants has been conducted by persons who are not employed by the plaintiffs.

Wherefore, the plaintiffs pray for a temporary restraining order, enjoining defendants and each of them, their officers, agents, members, employees, affiliated unions and all other persons or organizations acting in concert or conspiracy with defendants from:

1. Picketing, patrolling or bannering in any way the vessels of the plaintiffs or the docks where said vessels are located, or authorizing, directing, aiding, abetting or otherwise encouraging or participating in such picketing, patrolling or bannering;

2. Seeking to compel plaintiffs to employ only members of defendant labor union, or seeking to compel plaintiffs to coerce their employees to become members of defendant labor union, or to join or maintain membership therein as [fol. 19] a condition of employment aboard plaintiffs' vessels;

3. Attempting in any way to compel persons, partnerships or corporations who either seek to do business or are doing business with or performing services for plaintiff to cease doing its business or performing such services and attempting to compel them or any of them to refuse to enter upon plaintiffs' vessels or docks where such vessels are located;

4. Threatening, intimidating, interfering with or coercing plaintiffs, licensed marine engineers employed by plaintiffs, other employees of the plaintiffs, or any individuals, organizations, corporations, partnerships, by threats of trouble, physical violence, or other discriminatory practices;

5. All other acts or measures seeking to or attempting to carry out any of the foregoing; and that upon final hearing, the said injunction shall be made perpetual and

for such other relief as, in equity, plaintiffs may be found to be entitled, together with recovery of costs herein.

Johnson, Fritschler, Barstow & Witkin, By Barney B. Barstow, 304-308 Telegram Building, Superior, Wisconsin, Attorneys for the Plaintiffs.

[fol. 20] Of Counsel: Montague, Applequist, Lyons, Nolan, Donovan and Knetsch, 1000 Alworth Building, Duluth, Minnesota.

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IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

ORDER TO SHOW CAUSE—June 25, 1963

On reading and filing the verified complaint herein, and upon the affidavits of Robert J. McDade, S. W. Sexsmith and Howard Andrews, and on motion of Johnson, Fritschler, Barstow & Witkin, attorneys for the plaintiffs.

It Is Ordered that the defendants show cause before me at the Circuit Court Rooms at the Court House in the City of Superior, Douglas County, Wisconsin, on the 1st day of July, 1963, at 10:00 o'clock A. M. of said day, why an injunction should not be granted restraining the defendants, and each of them, as prayed for in the complaint of the plaintiffs.

It Is Further Ordered that until the hearing of said motion and order therein the defendants, and each of them, do absolutely desist and refrain from:

1. Picketing, patrolling or bannering in any way the vessels of the plaintiffs or the docks where said vessels are [fol. 21] located, or authorizing, directing, aiding, abetting or otherwise encouraging or participating in such picketing, patrolling or bannering;

2. Seeking to compel plaintiffs to employ only members of defendant labor union, or seeking to compel plaintiffs to coerce their employees to become members of defendant labor union, or to join or maintain membership therein as a condition of employment aboard plaintiffs' vessels;

3. Attempting in any way to compel persons, partnerships or corporations who either seek to do business or are doing business with or performing services for plaintiffs to cease doing its business or performing such services and attempting to compel them or any of them to refuse to enter upon plaintiffs' vessels or docks where such vessels are located;

4. Threatening, intimidating, interfering with or coercing plaintiffs, licensed marine engineers employed by plaintiffs, other employees of the plaintiffs, or any individuals, organizations, corporations, partnerships, by threats of trouble, physical violence, or other discriminatory practices;

5. All other acts or measures seeking to or attempting [fol. 22] to carry out any of the foregoing.

Let a copy of this order be served on said defendants, and each of them, at least forty-eight (48) hours before the time fixed for hearing the motion as aforesaid, and therewith a copy of the affidavits and the complaint above mentioned.

Dated at Superior, Wisconsin, in said County, this 25th day of June, 1963.

Allen Kinney, Circuit Judge.

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IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

AFFIDAVIT OF HOWARD F. ANDREWS

Howard F. Andrews, being duly sworn according to law, deposes and says:

I am Manager—Docks and Vessels for The Hanna Mining Company, a Delaware corporation, having a principal office at 1300 Leader Building, Cleveland 14, Ohio. The Hanna Mining Company owns and operates two (2) bulk freight vessels on the Great Lakes in interstate and foreign commerce. It also acts as the operating agent for vessels of National Steel Corporation, Hansand Steam-

ship Corporation and The Hanna Furnace Corporation which it operates on the Great Lakes in the business of [fol. 23] transporting bulk cargos in interstate and foreign commerce.

During negotiations in August 1962 between representatives of The Hanna Mining Company and the Marine Engineers Beneficial Association, District 2, AFL-CIO, a labor union which formerly represented the licensed marine engineers employed on these vessels, a majority of these licensed marine engineers signed petitions in writing which stated that they do not want to be represented by this union and forwarded such petitions to The Hanna Mining Company. Inasmuch as a substantial majority of these employees unequivocally stated that they do not want to be represented by this union at a time when no labor agreement was in effect, The Hanna Mining Company notified the said union that any further contract negotiations should be suspended until the question of representation could be resolved by means of a secret ballot election conducted by an impartial third party. The union refused to agree to such an election and commenced picketing all vessels owned or operated by The Hanna Mining Company on September 12, 1962, with the object of forcing or requiring the company to recognize the union as a collective bargaining agent of these engineers, to negotiate and execute a labor [fol. 24] contract and to compel the company to coerce the licensed marine engineers employed on these vessels to accept the union as their collective bargaining agent.

The picketing of these vessels has been conducted in many of the major ports on the Great Lakes, including Superior, Wisconsin; it continued until the end of the 1962 navigation season in early December. Upon the commencement of Great Lakes navigation in the latter part of April 1963, the Marine Engineers Beneficial Association resumed picketing these vessels with the same objectives. As a consequence of this picketing, towage services have been refused by harbor tugs and work stoppages have occurred among dock workers, thus causing substantial delays and economic losses in the operation of these vessels.

The Union picketed at the ore loading docks of the Great Northern Railway Company in Superior, Wisconsin, during the fall of 1962 and has continued this picketing from the beginning of the 1963 navigation season up to the present time whenever any vessel owned or operated by The Hanna Mining Company has been moored at this dock facility. In addition, the Marine Engineers Beneficial Association picketed the ship yard of the Fraser-Nelson Ship Building [fol. 25] & Dry Dock Company at Superior, Wisconsin, in the latter part of April 1963 when two vessels of this fleet were preparing to depart after the completion of repairs. The vessels involved were the SS. Joseph H. Thompson and the SS. E. T. Weir. The picketing had the effect of causing the officers and crew members of harbor tugs operated in this port by The Great Lakes Towing Company to refuse to tow all such vessels, thus causing considerable delay and endangering the safety of the vessels and the personnel thereon due to adverse weather conditions.

The licensed marine engineers employed on the vessels owned and operated by The Hanna Mining Company against whom the picketing by the Marine Engineers Beneficial Association is directed have not participated in any of the picketing activity; they have all continued working on their respective vessels without any interruptions or work stoppages.

Further, affiant saith not.

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IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN
AFFIDAVIT OF ROBERT J. McDADE

Robert J. McDade, being duly sworn according to law, deposes and says:

I am Director of Industrial Relations for The Hanna [fol. 26] Mining Company, a corporation organized and existing by virtue of the laws of the State of Delaware, and having a principal office at 1300 Leader Building, Cleveland 14, Ohio. The Hanna Mining Company owns and operates two (2) bulk freight vessels on the Great Lakes

engaged in the business of transporting bulk cargos in interstate and foreign commerce. It also acts as the operating agent for seven (7) vessels owned by National Steel Corporation, a Delaware corporation, one (1) vessel owned by Hansand Steamship Corporation, a Delaware corporation, and one (1) vessel owned by The Hanna Furnace Corporation, a New York corporation, which are engaged in the business of transporting bulk cargos on the Great Lakes in interstate and foreign commerce. Marine engineers licensed by the United States Coast Guard are employed in the Engine Department of these vessels in the positions of Chief Engineer, First Assistant Engineer, Second Assistant Engineer and Third Assistant Engineer. A total of five (5) engineer officers are employed on the larger vessels; four (4) are employed on the smaller vessels.

The Chief Engineer employed on each vessel is in charge of the Engine Department; his duties include supervising [fol. 27] and directing the work of all licensed marine engineers and crew members in his department which consist of three (3) or four (4) assistant engineering officers and at least nine (9) unlicensed crew members serving in the positions of Oiler, Fireman and Wiper or Coalpasser. The Engine Department is responsible for the maintenance and operation of the main propulsion machinery, boilers, auxiliaries, electrical equipment and all other machinery aboard each vessel. While the ship is operating, the complement of the Engine Department is divided into three separate watches with an Assistant Engineer in charge of each watch.

The Assistant Engineer in charge of each watch is responsible for the proper operation of all machinery and equipment aboard his vessel while he is on duty. He responsibly directs the work of all unlicensed crew members assigned to his watch. The hours designated for watches are from 12 to 4; 4 to 8; and 8 to 12; hence, each watch is on duty for two four-hour watches, and off duty for two eight-hour periods during a calendar day.

On larger vessels carrying four (4) assistant engineering officers, one assistant engineer is assigned to duty for [fol. 28] eight (8) hours each day for maintaining and repairing machinery and equipment of the Engine Department; he directs the work of unlicensed crew members and subordinate licensed marine engineers during the course of his duties.

The Chief Engineer of each vessel has the authority as the Company's representative to hire, suspend, lay-off, promote, discharge, assign or discipline employees in his department, to responsibly direct their work and adjust their grievances with the exercise of his own independent judgment. In the absence of the Chief Engineer, the First Assistant Engineer of each vessel assumes all of his duties and responsibilities and has the same authority. All licensed marine engineers have the authority to effectively recommend the hiring, suspension, promotion, discharge, assignment or disciplining of unlicensed crew members in the Engine Department and to responsibly direct the work of such crew members. In the course of their duties, assistant engineers are called upon to adjust the grievances of unlicensed employees with the use of their own independent judgment.

Vessels owned by National Steel Corporation, The Hanna Mining Company, The Hansand Steamship Corporation and [fol. 29] The Hanna Furnace Corporation are operated as one integrated fleet by The Hanna Mining Company for itself and as operating agent for National Steel Corporation, Hansand Steamship Corporation and The Hanna Furnace Corporation. Licensed marine engineers are assigned and transferred between vessels of these four companies without regard to ownership. Unlicensed crew members employed on the vessels of these companies are represented for collective bargaining by United Steelworkers of America, Local 7000, AFL-CIO, and they are similarly assigned and transferred between vessels of all four companies without regard to ownership. The appropriate bargaining unit designated by the National Labor Relations Board for un-

licensed seamen includes the vessels of all these companies as a single bargaining unit.

The Marine Engineers Beneficial Association, AFL-CIO, is a labor union with a membership composed of licensed marine engineers and is an unincorporated organization with a principal office in Brooklyn, New York. It has subdivisions known as districts. District 2 of the Marine Engineers Beneficial Association maintains branch offices in several Great Lakes ports where it has officers and representatives, including Duluth, Minnesota; Buffalo, New [fol. 30] York; Chicago, Illinois; and Toledo, Ohio. District 2 presently has collective bargaining agreements in effect with several companies employing licensed marine engineers aboard vessels operating on the Great Lakes and such labor contracts have compulsory union membership provisions requiring licensed marine engineers to join and maintain their membership in the Marine Engineers Beneficial Association as a condition of employment. The compulsory union membership clause in the Labor Contract presently in effect between such companies and District 2, Marine Engineers Beneficial Association, reads, in part, as follows:

"(a) Each present engineer who on October 1, 1961 was a member of the Union in good standing and each engineer who became a member after that date shall, as a condition of employment, maintain his membership in the Union.

"(b) Each engineer hired on or after the the effective date of this agreement, shall, as a condition of employment, commencing on the 30th day following the beginning of such employment or the effective date of this agreement, whichever is later, acquire [fol. 31] and maintain membership in the Union."

In September 1962 the Marine Engineers Beneficial Association, District 2, commenced picketing vessels owned or operated as agent by The Hanna Mining Company for the purpose of requiring the licensed marine engineers em-

ployed on such vessels to designate that organization as their bargaining agent and to compel The Hanna Mining Company to recognize it as the collective bargaining representative for such engineers. The circumstances and factual background of this controversy are hereinafter fully outlined. For convenience and brevity, I shall refer to the Marine Engineers Beneficial Association and its District 2 as the "MEBA"; The Hanna Mining Company will be abbreviated to "Hanna;" National Steel Corporation will be called "National"; The Hansand Steamship Corporation will be referred to as "Hansand"; and The Hanna Furnace Corporation will be referred to as "Furnace."

I.

In May 1961, the MEBA claimed to represent a majority of the licensed marine engineers on Great Lakes vessels owned by Hanna, National and Hansand and demanded to be recognized as the collective bargaining representative [fol. 32] for such engineering officers. In order to resolve the representative status of the MEBA, the parties agreed to have an election conducted by a labor arbitrator named Mr. Mitchell Shipman. At the conclusion of the election, arbitrator Shipman counted the ballots and certified that a majority of the engineers had voted in favor of MEBA representation on July 13, 1961. The MEBA was thereafter recognized by the companies as the collective bargaining agent for all licensed marine engineers employed on Hanna, National and Hansand vessels. Collective bargaining ensued between the parties which culminated in a written labor agreement entered into on October 4, 1961, which expired on July 15, 1962.

II.

Upon the expiration of the previous collective bargaining agreement, Hanna and the MEBA commenced negotiations for a new labor contract in August 1962. While such negotiations were continuing and before a new agreement had been reached, a majority of the licensed marine en-

gineers employed on Hanna, National and Hansand vessels signed petitions in writing which stated that they did not want to be represented by the MEBA and sent them to Hanna. Immediately thereafter, [fol. 33] Hanna notified the MEBA that such petitions had been received bearing the signatures of a substantial majority of the licensed engineers, thus raising a question of representation which should be resolved prior to any further negotiations between the parties upon a new labor contract; that the MEBA could investigate the authenticity of these petitions by consulting with the engineers aboard their respective vessels; and that if investigation by the MEBA failed to confirm their authenticity, Hanna was willing to have the question of authenticity of these petitions submitted to arbitration. However, if no question was raised regarding the authenticity of these petitions, Hanna proposed that another election should be conducted by an impartial labor arbitrator by secret ballot with observers in attendance representing the various parties involved, including the licensed marine engineers, to satisfy everyone that the election was properly conducted. Hanna further advised the MEBA that until its majority representation status was established by means of an election, Hanna could not recognize the MEBA as collective bargaining representative for the licensed marine engineers because of the petitions and was compelled to suspend negotiations [fol. 34] with the MEBA upon the terms and conditions of a new labor agreement pending an election to resolve the question of representation which had arisen.

III.

Representatives of the MEBA boarded the vessels of Hanna, National and Hansand and consulted with the licensed marine engineers in August and September 1962. Thereafter, the MEBA demanded a resumption of contract negotiations without any prior election to resolve the question of representation, notwithstanding the authenticity of the petitions from the engineers involved. Hanna refused to resume contract negotiations until its marine engineers

had an opportunity to vote in a secret ballot election on the selection of the MEBA as their collective bargaining representative. Several meetings were held between Hanna and the MEBA and, on September 11, 1962, the MEBA proposed that a labor contract should be immediately negotiated and signed by the parties and that such labor contract could then be submitted to the marine engineers for ratification by the MEBA without any participation by Hanna or the other companies for which it acts as operating agent or the licensed marine engineers directly involved. Hanna rejected the Union proposal because it did [fol. 35] not provide for a secret ballot election conducted by an impartial labor arbitrator which would assure each engineer an opportunity to make his own individual choice without any coercion or restraint by anyone; Hanna reiterated its proposal of having an election conducted by an impartial arbitrator to determine whether or not the MEBA represented a majority of the engineers.

IV.

On September 12, 1962, the MEBA commenced picketing the SS. Joseph H. Thompson, a vessel owned by Hansand for which Hanna is the operating agent, at the North Western-Hanna Fuel Company dock in Duluth, Minnesota, where its cargo of coal was being unloaded by the dock company. The vessel had arrived during the previous evening and unloading operations had commenced so that a small portion of the Thompson's coal cargo had been removed. The picketing activity was orginally conducted on property of the dock company near the coal dock employees' parking lot by several pickets bearing signs. Later, the pickets moved to the entrance roadway to the dock company premises. The picket signs read as follows:

"HANNA MINING UNFAIR TO
MARINE ENGINEERS BENEFICIAL

[fol. 36] ASSOCIATION
REFUSES TO NEGOTIATE CONTRACT
AFL-CIO
NO DISPUTE WITH ANY OTHER
EMPLOYER
SS. JOSEPH THOMPSON"

V.

The picketing of the SS. Joseph H. Thompson caused the coal dock workers of North Western-Hanna Fuel Company to engage in a concerted refusal to unload the coal cargo from the vessel. The work stoppage continued until September 28, 1962, when the Thompson left this dock without unloading the remainder of her cargo of coal.

The MEBA commenced picketing all vessels owned or operated as agent by Hanna at many of the ports on the Great Lakes including Buffalo, New York; Ashtabula, Ohio; Cleveland, Ohio; Detroit, Michigan; Superior, Wisconsin; and Duluth, Minnesota on September 12, 1962 or soon thereafter. The picketing continued until the close of the Great Lakes season of navigation on or about December 1, 1962 when all vessels were laid up for the winter months and the crews laid off. As a consequence of the picketing, the Hanna, National and Hansand vessels were refused tug [fol. 37] service at many Great Lakes ports; some dock employees of the Great Northern Railway Company at Superior, Wisconsin, refused to load iron ore into such vessels; and the coal dock workers at Duluth, Minnesota persisted in their refusal to unload the coal cargo from the SS. Joseph Thompson. However, none of the licensed marine engineers or unlicensed seamen employed on vessels owned or operated by Hanna participated in any of the MEBA picketing activities and they continued working on their respective vessels until the close of navigation without any work stoppages.

VI.

On September 12, 1962, Hanna filed a petition for a representation election with the Regional Director of the National Labor Relations Board in Cleveland, Ohio, which was designated as Case No. 8-RM-308, requesting the Board to conduct a representation election among the licensed marine engineers on its vessels to determine whether or not the MEBA represented a majority. Upon investigation, the Regional Director dismissed the petition for the stated reason that the licensed marine engineers were supervisors within the meaning of the National Labor Relations Act and therefore not subject to Board jurisdiction. Hanna [fol. 38] promptly appealed the Regional Director's determination to the National Labor Relations Board in Washington, D. C. On November 20, 1962, the Board affirmed the dismissal by the Regional Director upon a finding that a unit of supervisors was involved which is inappropriate under the Act. A copy of this letter is hereto appended as Exhibit "A."

VII.

On September 15, 1962, Hanna filed a charge with the Regional Director of the National Labor Relations Board in Minneapolis, Minnesota, claiming that the MEBA had engaged in illegal secondary boycott activity violating Section 8 (b) (4) of the Act by inducing and encouraging individuals employed by the North Western-Hanna Fuel Company at Duluth, Minnesota, to engage in a boycott of the SS. Joseph H. Thompson. Upon investigation, the Regional Director dismissed the charge on October 22, 1962, whereupon Hanna immediately appealed to the General Counsel of the National Labor Relations Board in Washington. The General Counsel affirmed the Regional Director's dismissal of the charge and his refusal to issue a complaint on December 10, 1962. A copy of the General Counsel's letter affirming the dismissal is hereto appended as Exhibit "B."

[fol. 39] VIII.

On September 27, 1962, Hanna filed a charge against the MEBA with the Regional Director of the National Labor Relations Board in Cleveland, Ohio, claiming that the continued picketing of its vessels with the object of forcing or requiring Hanna to recognize or bargain with the MEBA as the representative of its marine engineers or forcing or requiring marine engineers employed by Hanna to accept or select the MEBA as their collective bargaining representative violated Section 8 (b) (7) of the National Labor Relations Act. The Regional Director assigned Case No. 8 CP-43 to the charge and, upon investigation, dismissed the charge and refused to issue a complaint by letter dated October 5, 1962. A copy of the Regional Director's letter is hereto appended as Exhibit "C".

The Regional Director's dismissal of the charge was immediately appealed to the General Counsel of the National Labor Relations Board in Washington, D. C. The Regional Director's dismissal was affirmed by the General Counsel in a letter dated November 26, 1962, a true copy of which is hereto appended as Exhibit "D."

In response to a request for further clarification, the General Counsel amplified upon the basis for affirming the Re-[fol. 40] gional Director's action in a letter dated December 21, 1962, stating that the disposition of this case was predicated solely upon a finding that the licensed engineers were supervisors who were not covered by Section 8(b)(7) of the Act. Having reached a conclusion which was not dispositive of the charge, the appeal was denied without considering what the posture of the case would have been had the unit personnel been employees within the meaning of the National Labor Relations Act and, in processing the appeal, the General Counsel's office acted in accordance with its established practice. A copy of that letter is hereto appended as Exhibit "E."

## IX.

On September 18, 1962, after the commencement of MEBA picketing, Hanna sent the following telegram to the Secretary-Treasurer of the MEBA at Toledo, Ohio:

"To avoid any possible misunderstanding regarding the present situation, the Company advised you on August 22 that a substantial majority of our engineers have signed written petitions stating that they do not want to be represented by the MEBA and sent these petitions to the Company. It is the Company's sincere belief that it cannot in good faith sign a contract recog- [fol. 41] nizing your Union as exclusive collective bargaining agent for our engineers and compelling them to belong to your Union under these circumstances. Therefore, the Company proposed a proper election by secret ballot to determine whether or not your Union represented a majority of our engineers and if any question existed on the part of the MEBA that the petitions from the Engineers were not authentic, then the Company would gladly submit this question to an impartial arbitrator for determination. With our consent and at our invitation you consulted with the engineers aboard our vessels for more than two weeks and thereafter raised no question concerning the authenticity of our engineers' petitions. The Company repeats its previous proposals and is ready to meet with the MEBA at any time to discuss a procedure for having a proper election. Furthermore, the Company is also willing to submit the petitions to an impartial arbitrator and give him authority to determine if the petitions signed by the engineers are authentic and if a majority of our engineers have actually signed such petitions, thus raising a bona fide question concerning the MEBA's right to act as the bargaining agent [fol. 42] for our engineers. Certainly, this procedure is fair to everyone and would avoid possible loss to officers and crew members which can never be replaced. A copy of this message is being sent to all our vessels."

On September 22, 1962, the following reply was received by telegram from the Secretary-Treasurer of the MEBA at Toledo, Ohio:

> "Received telegram from yourself and attorneys also NLRB charges alleging secondary boycott. NLRB petitions, numerous press releases, invitation to Labor Secretary, etc. As to authenticity of petition you are correct. We did not nor do we intend to question it. We are perfectly aware of methods used to obtain it. You are also perfectly aware engineers are supervisory and NLRB charges and petitions are subject to dismissal for lack of jurisdiction and/or merit. I suggest you dismiss attorneys, cease stalling, resume immediate meetings in good faith and work out a solution satisfactory to the engineers. I repeat that we are willing to take any reasonable solution down to the ships for engineers' approval or rejection. In the interval, we will attempt to keep up with and answer your legal gymnastics, one-sided press releases and we are also [fol. 43] inviting Labor Secretary Wirtz to investigate this dispute. Copy to engineers. Melvin Pelfrey, Secretary-Treasurer, District 2, MEBA."

Hanna and the companies for which it acts as operating agents for vessels on the Great Lakes has adopted and continues to maintain the position that the controversy with the MEBA regarding the representation of its licensed marine engineers should be resolved by means of a properly conducted secret ballot election and has so notified the MEBA repeatedly. Notwithstanding Hanna's willingness to resolve the question of representation by means of an election, the MEBA has continued to insist upon the negotiation and execution of a complete collective bargaining agreement extending recognition to the MEBA as collective bargaining agent and containing compulsory Union membership provisions without first establishing its majority status, in support of its demand for a labor contract

notwithstanding its doubtful representative status, the MEBA has intensively picketed all Great Lakes vessels owned and/or operated by Hanna for organizational and recognition objectives. The MEBA picketing has caused coal dock workers, crews of tugs, workers at iron ore load- [fol. 44] ing docks and ship yard employes to refuse to perform services in the course of their employment to Hanna vessels which has caused economic losses of substantial proportions. In published newspaper articles and other communications, the MEBA has stated that this picketing activity will be continued unless Hanna executes a labor contract with the MEBA irrespective of the existence of a question of representation.

XI.

In 1963, the Steamer George B. Fink was sold by National to Furnace prior to the commencement of the Great Lakes navigation season. The said vessel, formerly operated by Hanna for National is now operated by Hanna for Furnace in the same capacity as operating agent as part of the integrated Hanna fleet.

In the latter part of April, 1963, when the Great Lakes navigation season opened, the MEBA resumed picketing all Hanna vessels at Superior, Wisconsin, with signs identical to those used in 1962. On May 10, 1963, the Secretary-Treasurer of the MEBA, District 2, wrote to all Hanna engineers stating that the company must negotiate and execute a labor contract before the MEBA would agree to have any type of election. As a consequence of such picketing, [fol. 45] Hanna vessels have been refused tug service. The Steamer E. T. Weir of National and the Steamer Joseph H. Thompson of Hansand were delayed in departing from the Fraser-Nelson Ship Building & Dry Dock Company shipyard in Superior by adverse weather conditions due to a lack of tugs. Hanna vessels are continually delayed and endangered by the refusal of tug service at the ore loading docks of the Great Northern Railway Company in Superior, Wisconsin.

The continuation of the MEBA picketing to compel the Hanna engineers to belong to the Union regardless of their own desires and to force Hanna (and the companies for which it acts as the operating agent) to deal with the MEBA and to compel its engineers to belong to the Union to keep their jobs without a proper election is causing irreparable injury and is endangering the safety of vessels and their crews due to the lack of tug services in narrow channels and confined waters where navigation is hazardous.

Further, affiant saith not.

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[fol. 46]

EXHIBIT "A" TO AFFIDAVIT OF ROBERT J. McDADE

NATIONAL LABOR RELATIONS BOARD

Washington 25, D. C.

November 20, 1962

Re: The Hanna Mining Company
Case No. 8-RM-308

Mr. Robert J. McDade
The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

Dear Mr. McDade:

The Board has considered carefully your Request to Review of the Regional Director's dismissal of the petition in the above case and has concluded that, as the Appellant's appeal makes no affirmative claim that a majority of the "employees" as distinguished from "supervisors" are sought to be represented in an appropriate unit and as a unit of supervisors is otherwise inappropriate, no question concerning representation in an appropriate unit exists. Continental Oil Black Company (Westlake Louisiana

plant), 102 NLRB 870; See Amperex Electronic Corporation, 109 NLRB 353.

Moreover, the apparent request of the Appellant for a declaratory judgment by the Board cannot be considered in an original representation proceeding. The Ohio Con-[fol. 47] solidated Telephone Co., 118 NLRB 375; American Linen Supply Co., 128 NLRB 639. Accordingly, the Regional Director's dismissal of the petition was warranted.

Very truly yours,

GEORGE A. LEET
Associate Executive Secretary

cc: Philip Fusco, Regional Director

Marine Engineers Beneficial Ass'n.,
Dist. 2, AFL-CIO
c/o 120 Summit St., Toledo, Ohio
John Hanninen, Atty., Union Commerce
Bldg., Cleveland 14, Ohio

[fol. 48]

EXHIBIT "B" TO AFFIDAVIT OF ROBERT J. McDADE

NATIONAL LABOR RELATIONS BOARD

Office of the General Counsel
Washington 25, D. C.

December 10, 1962

Re: ILA, Local 1328 and/or Local 1343,
AFL-CIO, Bulk Cargo Dock Workers

(The Hanna Mining Company)
Case No. 18-CC-126
National Marine Engineers
Beneficial Assn. and District 2
Marine Engineers Beneficial Assn.
(The Hanna Mining Co.)
Case No. 18-CC-127

Mr. Robert J. McDade
Director of Industrial Relations
The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

Dear Mr. McDade:

Your appeals from the Regional Director's refusal to issue complaints in the above cases, charging violations under Section 8 of the National Labor Relations Act, have been duly considered.

This Office sustains the ruling of the Regional Director. It was concluded that the evidence was insufficient to establish that either respondent engaged in unlawful secondary [fol. 49] activity, as alleged. In this connection, the evidence revealed that the picketing by MEBA at the common situs herein conformed to Moore Dry Dock standards (92 NLRB 547), notwithstanding that picketing continued after

the vessel was abandoned (cf. Ingram Barge Co., 136 NLRB No. 112), and that oral appeal by MEBA pickets to personnel of the neutral employer were for action solely with respect to the primary situs and did not constitute unlawful activity within the meaning of Section 8 (b)(4) of the Act. Cf. Pure Oil Company, 84 NLRB 315. Furthermore, MEBA's activity at other sites did not evince an unlawful object on the part of the Union inconsistent with the ostensibly primary object of the picketing at the situs of the dispute. Nor did the totality of its conduct establish the unlawfulness of its activity.

As to the walkout by the employees of the Fuel Company, insufficient basis was deemed to exist for a finding that such action was in furtherance of MEBA's dispute with Hanna Mining rather than in protest of an alleged breach of the existing contract between the Fuel Company and the ILA. Accordingly, and absent any other evidence to support the [fol. 50] instant charges, further proceedings herein were deemed unwarranted.

Very truly yours,

Stuart Rothman
General Counsel

By IRVING M. HERMAN
Irving M. Herman
Director, Office of Appeals

cc: Director, 18th Region
John H. Hanninen, Attorney at Law,
860 Union Commerce Building,
Cleveland 14, Ohio

Harry C. Applequist, Attorney at Law,
One Thousand Alworth Bldg.,
Duluth 2, Minnesota

International Longshoreman's Association, AFL-CIO, Local 1328 and/or Local 1343, I. L. A., AFL-CIO, Bulk Cargo Dock Workers, 312 West Second Street, Duluth, Minnesota

Local 1343, I. L. A., AFL-CIO, Bulk Cargo Dock Workers, 4627 W. Sixth Street, Duluth, Minnesota

International Longshoremen's Association, AFL-CIO, 420 Lyceum Bldg., Duluth, Minnesota

National Marine Engineers Beneficial Association, AFL-CIO, and District [fol. 51] 2, Marine Engineers Beneficial Association, AFL-CIO, 312 West Second Street, Duluth, Minnesota, Attn: Mr. Charles LaPorte, Vice President

Mr. Lee Pressman, 50 Broadway, New York, New York

CERTIFIED MAIL

EXHIBIT "C" TO AFFIDAVIT OF ROBERT J. McDADE

NATIONAL LABOR RELATIONS BOARD

EIGHTH REGION
720 Bulkley Building, 1501 Euclid Avenue
Cleveland 15, Ohio

Telephone MAin 1-4465

October 5, 1962

The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

Re: Nat'l Marine Engineers Beneficial Association, AFL-CIO and District 2, Marine Engineers Beneficial Association, AFL-CIO
(The Hanna Mining Company)
Case No. 8 CP-43

Gentlemen:

The above-captioned case charging a violation under [fol. 52] Section 8(b)(7) of the National Labor Relations Act has been carefully investigated and considered.

It does not appear that further proceedings on the charge are warranted inasmuch as there is insufficient evidence that there was picketing of, or a threat to picket, an employer for an object prescribed by Section 8(b) (7) of the Act. I am, therefore, refusing to issue a complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing a request for such review with the General Counsel of the National Labor Relations Board, Washington 25, D. C., and a copy with me. This request must contain a complete statement setting forth the facts and reasons upon

which it is based. The request must be received by the General Counsel in Washington, D. C., by the close of business on October 18, 1962. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request should be submitted to me.

Very truly yours,

PHILIP FUSCO
Philip Fusco
Regional Director

[fol. 53]

cc: Nat'l. Marine Eng. Beneficial Assn., AFL-CIO, 120 Summit, Toledo, Ohio

Dist. 2, Marine Eng. Beneficial Assn., AFL-CIO, 120 Summit, Toledo, Ohio

John H. Hanninen, Attorney, 860 Union Commerce Bldg., Cleveland 14, Ohio

General Counsel, National Labor Relations Board, Washington 25, D. C.

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

EXHIBIT "D" TO AFFIDAVIT OF ROBERT J. McDADE

NATIONAL LABOR RELATIONS BOARD

Office of the General Counsel
Washington 25, D. C.

November 26, 1962

Re: National Marine Engineers Beneficial Association, AFL-CIO and District 2, Marine Engineers Beneficial Assoc., AFL-CIO
(The Hanna Mining Company)
Case No. 8-CP-43

Mr. Robert J. McDade
Director of Industrial Relations
The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

[fol. 54] Dear Mr. McDade:

Your appeal from the Regional Director's refusal to issue complaint in the above case, charging violations under Section 8 of the National Labor Relations Act, has been duly considered.

This office sustains the ruling of the Regional Director. It was concluded that there was insufficient evidence to support a finding that the Unions' picketing of, or the threat to picket, the Employer was for an object prescribed by Section 8 (b)(7) of the Act, particularly in view of the fact that the Union was seeking representation rights in a unit composed solely of supervisors as distinguished from employees within the meaning of the Act. In this connection, it was noted that the Board has sustained the Regional Director's dismissal of the Company's RM petition on the ground that the unit, composed of supervisors, was inappropriate and failed to present a real question concerning

representation. Under all the circumstances therefore, further proceedings herein were deemed unwarranted.

Very truly yours,

Stuart Rothman
General Counsel

[fol. 55] By Irving M. Herman
Irving M. Herman
Director, Office of Appeals

cc: See next page

Certified Mail

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Exhibit "E" to Affidavit of Robert J. McDade

NATIONAL LABOR RELATIONS BOARD

Office of the General Counsel
Washington 25, D. C.

December 21, 1962

Re: National Marine Engineers Beneficial Association, AFL-CIO, and District 2, Marine Engineers Beneficial Association, AFL-CIO (The Hanna Mining Co.)
Case No. 8-CP-43

Mr. Robert J. McDade
Director of Industrial Relations
The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

Dear Mr. McDade:

This is in reply to your letter of December 17, concerning the decision by this Office to sustain the Regional Director's refusal to issue complaint in the captioned matter. Our disposition of this case was predicated solely on our con-

[fol. 56] clusion that the supervisory status of the licensed engineers precluded a finding that the Union's picketing and other activity was for an object proscribed by Section 8 (b) (7) of the Act. Moreover, having reached a conclusion which in our view was dispositive of the charge in this matter, the appeal was denied without considering what the posture of the case would have been had the unit personnel been employees within the meaning of Section 2 (3) of the Act. We might add that in processing the appeal in this manner, this Office acted in accordance with its established practice.

Accordingly, we have no alternative but to deny your request for reconsideration and to consider this case closed.

Very truly yours,

STUART ROTHMAN
General Counsel

By IRVING M. HERMAN
Irving M. Herman
Director, Office of Appeals

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IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

AFFIDAVIT OF STUART W. SEXSMITH

STUART W. SEXSMITH, being duly sworn according to law, deposes and says:

[fol. 57] I am Vessel Manager for The Hanna Mining Company, a corporation organized and existing by virtue of the laws of the State of Delaware and having a principal office at 1300 Leader Building, Cleveland 14, Ohio. The Hanna Mining Company owns and operates two (2) bulk freight vessels on the Great Lakes engaged in the business of transporting bulk cargos in interstate and foreign commerce. It also acts as the operating agent for seven (7)

vessels owned by National Steel Corporation, a Delaware corporation, one (1) vessel owned by Hansand Steamship Corporation, a Delaware corporation, and one (1) vessel owned by The Hanna Furnace Corporation, a New York corporation, which are operated on the Great Lakes in the business of transporting bulk cargos in interstate and foreign commerce.

In May 1961, the Marine Engineers Beneficial Association, District 2, claimed to represent a majority of the licensed marine engineers employed on Great Lakes vessels owned or operated by The Hanna Mining Company and demanded to be recognized as the collective bargaining agent for such engineering officers. The vessels of these companies are operated as one integrated fleet. Engineering officers and other personnel are assigned to vessels operated [fol. 58] by The Hanna Mining Company without regard to ownership and are transferred between vessels of the various companies. Similarly, unlicensed crew members are assigned to such vessels irrespective of ownership and the United Steelworkers of America, Local 7000, AFL-CIO, has been certified as the collective bargaining agent by the National Labor Relations Board for all unlicensed personnel on these vessels in one bargaining unit.

In order to determine the status of the Marine Engineers Beneficial Association as collective bargaining agent for these engineers, the parties mutually agreed to have a representation election conducted by a labor arbitrator. At the conclusion of the election, it was determined that a majority of these engineers had voted in favor of representation by the Union on July 13, 1961. The Marine Engineers Beneficial Association was thereafter recognized as the collective bargaining agent for all licensed marine engineers employed on these vessels. Collective bargaining ensued which culminated in a written labor contract effective October 4, 1961 which expired on July 15, 1962.

Upon the expiration of the previous collective bargaining [fol. 59] agreement, negotiations were commenced for a new labor contract in August 1962. While such negotiations

were continuing prior to any agreement for a new labor contract, a majority of these licensed marine engineers signed petitions in writing which stated that they did not want to be represented by the Marine Engineers Beneficial Association and forwarded them to The Hanna Mining Company. Upon receipt thereof, the Marine Engineers Beneficial Association was notified that such petitions had been received containing the signatures of a substantial majority of these engineers, thus raising a question of representation which should be resolved prior to any further negotiations; that the authenticity of these petitions could be investigated by the Marine Engineers Beneficial Association by consultation with such engineers aboard their respective vessels; and that if the Union's investigation failed to confirm the authenticity of such petitions, any questions concerning their authenticity could be submitted to an arbitrator. On the other hand, if no questions were raised regarding the authenticity of such petitions, another election should be conducted by an impartial labor arbitrator to determine whether or not the Marine Engineers Beneficial Association represented a majority of [fol. 60] these licensed marine engineers. Until this question was resolved, all negotiations on a new collective bargaining agreement should be held in abeyance.

Representatives of the Marine Engineers Beneficial Association conducted an investigation aboard these vessels and consulted with the licensed marine engineers employed thereon during August and September 1962. Without questioning the authenticity of such petitions, the Marine Engineers Beneficial Association nevertheless demanded a resumption of contract negotiations without any prior election to resolve the question of representation. This demand was refused in order to afford these engineers an opportunity to accept or reject the Marine Engineers Beneficial Association as their collective bargaining representative on the basis of a secret ballot election. The Union continued to demand a resumption of negotiations and the execution of a labor contract without an election.

On September 12, 1962, the Union commenced picketing all vessels owned or operated by The Hanna Mining Company in the major ports on the Great Lakes in support of its demand for the negotiation and execution of a labor contract without an election. This picketing activity continued until the end of the 1962 navigation season on [fol. 61] the Great Lakes in the early part of December 1962. Immediately upon the commencement of navigation in the latter part of April 1963, the Marine Engineers Beneficial Association resumed such picketing activities in the port of Superior, Wisconsin, the picket signs reading as follows:

"HANNA MINING UNFAIR TO
MARINE ENGINEERS BENEFICIAL
ASSOCIATION
REFUSES TO NEGOTIATE CONTRACT
AFL-CIO
NO DISPUTE WITH ANY OTHER
EMPLOYER"

The aforementioned picket signs are supplemented with the names of particular vessels against which such picketing activities are directed. The picketing has been conducted at the shipyard of the Fraser-Nelson Ship Building & Dry Dock Company and the ore loading docks of the Great Northern Railway Company in Superior, Wisconsin; it has been carried on whenever any vessel owned or operated by this company is in the port of Superior, Wisconsin. As a consequence, these vessels have been refused towage services by harbor tugs and delays have been caused whenever adverse weather conditions have been encountered. The safety of the vessels and the officers and crew [fol. 62] members employed thereon has been endangered by the lack of towage services because of the necessity for maneuvering in the confined waters in the harbor and to the docks without tug services. The resulting delay to these vessels has caused substantial economic losses.

The Hanna Mining Company is ready and willing to arrange for a secret ballot election by an impartial third party among the licensed marine engineers to determine whether or not a majority of these engineers desire to be represented by the Marine Engineers Beneficial Association and to abide by the result in order to give such engineers a free choice upon the selection of a collective bargaining agent. Nevertheless, the Union has refused to agree to any secret ballot election by an impartial third party and has continued to insist upon the negotiation and execution of a labor contract which would require the company to recognize the Union as the representative of a majority of these engineers and force these engineers to accept the Union as their collective bargaining agent.

Despite the incessant picketing by the Marine Engineers Beneficial Association, the licensed marine engineers employed by The Hanna Mining Company have not partici- [fol. 63] pated in any of the picketing activity and have continued working aboard their respective vessels without any interruptions and work stoppages.

Further affiant saith not.

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IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

AFFIDAVIT OF RICHARD D. BIBBY

RICHARD D. BIBBY, being first duly sworn on oath, deposes and says that he is a resident of the City of Duluth, St. Louis County, Minnesota, and that he is the Vessel Agent of the Hanna Mining Company; that on or about 5:30 o'clock A. M. June 20, 1963, he personally observed the signs displayed by the pickets at the Great Northern Ore Docks in the City of Superior, Wisconsin, and that at such time he observed that the banner displayed by such pickets bore the following words:

"HANNA MINING COMPANY
ON STRIKE
REFUSES TO NEGOTIATE CONTRACT
DISTRICT 2 MEBA AFL-CIO
SS. ERNEST T. WEIR
NO DISPUTE WITH ANY OTHER
EMPLOYER";

That this affidavit is made for the purpose of supplementing the affidavits and the complaint in that certain action in the Circuit Court for Douglas County, Wisconsin wherein [fol. 64] The Hanna Mining Company, et al, are plaintiffs, and District 2, Marine Engineers Beneficial Association, AFL-CIO, et al, are defendants, and for the purpose of informing the court that the words on the banners displayed by such pickets have been changed since such affidavits and complaint were prepared.

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In the Circuit Court for Douglas County, Wisconsin

Defendants' Motion—July 5, 1963

The defendants, appearing specially herein, move the Court to dismiss the Complaint herein on the following grounds:

1. The Court lacks jurisdiction over the subject matter in that the National Labor Relations Board has exclusive jurisdiction of the subject matter herein.

2. The Court has no jurisdiction over the persons of the defendants.

Dated this 5th day of July, 1963.

P. G. McGill, Attorney for Defendants, P. O. Address: 305 Telegram Building, Superior, Wisconsin.

IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

AFFIDAVIT OF DAVID SCRIBNER

DAVID SCRIBNER, being duly sworn, deposes and says that [fol. 65] he is a member of the firm of Pressman and Scribner, counsel for defendant, District 2, Marine Engineers Beneficial Association, AFL-CIO, hereinafter called "District 2," and is fully familiar with the facts herein.

On two different occasions the National Labor Relations Board has recently ruled that District 2 is a labor organization within the meaning of the National Labor Relations Act, as amended. In Case No. 6-RC-3291 in the case entitled, the United States Steel Corporation, River Transportation Department, the regional director for the Sixth Region of the National Labor Relations Board, issued a decision and direction of election. In that case District 2 intervened on the basis of a current contract with the employer. The regional director ruled that District 2 was a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act.

Section 2 (5) of that Act provides as follows:

> "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor [fol. 66] disputes, wages, rates of pay, hours of employment, or conditions of work."

Having found in the case that the engineers employed by the United States Steel Corporation on the employer's tow boats operating on the Allegheny and Monongahela Rivers and Ohio River were non-supervisory and employees within the meaning of the Act, the regional director was impelled to find that District 2 which included such employees within its membership was a "labor organization"

as defined above. The National Labor Relations Board denied a review of the regional director's decision, thereby affirming that decision, including the specific ruling that District 2 was a labor organization within the meaning of the Act.

In Case No. 13-CC-320 entitled District 2, Marine Engineers Beneficial Association, AFL-CIO and Chicago and Illinois Midland Railway Company, the railway company had filed a charge with the National Labor Relations Board alleging that District 2 had violated Section 3 (b) (4) of the National Labor Relations Act as amended, by engaging in secondary boycott activity. A basic issue in that case was whether District 2 was a labor organization within the meaning of that Act. If it were to be found that it was not such a "labor organization" the National Labor Relations [fol. 67] Board would have had no jurisdiction to issue any order directed against District 2 or to take any other action with respect to District 2 since a prerequisite of a finding of violation of Section 8 (b) (4) of that Act is that the union charged is a labor organization within the meaning of the Act. After extensive hearings on the very issue of labor organization, the Trial Examiner issued his Intermediate Report holding that District 2 was a labor organization within the meaning of the Act. Again the basis for that holding was that District 2's jurisdiction embraced engineers employed on tow boats on the Mississippi River and its tributaries, and that such engineers were non-supervisory and employees within the meaning of the National Labor Relations Act. And, as in the United States Steel Corporation, supra, it was held that since non-supervisory employees were included within the membership of District 2, that union necessarily was a labor organization within the definition of Section 2 (5) of the Act. The Case No. 13-CC-320 was, after issuance of the Trial Examiner's Intermediate Report, transferred to the National Labor Relations Board. That Board adopted and affirmed the ruling of the Trial Examiner, including the ruling that [fol. 68] District 2 is a labor organization within the meaning of the Act.

Attached hereto and marked Exhibit "A" and made a part hereof for the convenience of the Court, is a copy of the Decision and Direction of Election in the United States Steel Corporation Case No. 6-RC-3291, dated April 29, 1963. Attached hereto and marked Exhibit "B" and made a part hereof, is a copy of the Intermediate Report of the Trial Examiner in Case No. 13-CC-320.

The composition of District 2 as of the present time is the same as it was when the National Labor Relations Board considered and acted upon the two cases referred to above. District 2 continues to include within its membership and to represent a substantial number of engineers employed on the Mississippi River and its tributaries who function in exactly the same manner as did the engineers referred to in the two cases referred to above and who thereby are employees within the meaning of the Act.

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IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

AMENDED COMPLAINT

Now comes The Hanna Mining Company, National Steel Corporation, The Hansand Steamship Corporation and The Hanna Furnace Corporation, plaintiffs herein, by Johnson, Fritschler, Barstow & Witkin, their attorneys, and for [fol. 69] their amended complaint respectfully state:

I.

Plaintiff The Hanna Mining Company is a corporation organized and existing under the laws of the State of Delaware with a principal office and place of business at 1300 Leader Building, Cleveland 14, Ohio, and it owns and operates vessels on the Great Lakes and tributary waters engaged in the business of transporting cargos in interstate and foreign commerce; The Hanna Mining Company is the authorized and designated vessel operating agent

for plaintiff National Steel Corporation, a corporation of the State of Delaware, The Hansand Steamship Corporation, a corporation of the State of Delaware, and The Hanna Furnace Corporation, a corporation of the State of New York, which also owns vessels on the Great Lakes engaged in the business of transporting cargos in interstate and foreign commerce. The aforesaid vessels are operated as one integrated fleet by plaintiff The Hanna Mining Company as the vessel operating agent.

The officers and crew members employed on plaintiffs' vessels are assigned interchangeably without regard to the ownership of the vessels by plaintiff The Hanna Mining [fol. 70] Company as one of its duties or functions as the designated vessel operating agent. Marine engineers licensed by the United States Coast Guard are employed by plaintiffs on the said vessels to operate and maintain the engines, boilers and other machinery and to direct and supervise the work of unlicensed crew members in the performance of such work in the Engine Department of each vessel.

II.

Defendant District 2, Marine Engineers Beneficial Association is an unincorporated association affiliated with the AFL-CIO and has a principal office and place of business at 190 21st Street, Brooklyn 32, New York. The President and Chief Executive Officer of said District 2 is Raymond T. McKay whose office is located at its principal place of business in Brooklyn, New York.

The Secretary-Treasurer and Assistant Business Manager of said District 2 is Melvin H. Pelfrey who maintains an office at 120 Summit Street, Toledo 4, Ohio.

The Vice President and Assistant Business Manager of said District 2 is Charles E. LaPorte who maintains an office at 312 West 2nd Street, Duluth, Minnesota.

Frank Leckie is a representative of the said District 2 [fol. 71] employed at 312 West 2nd Street, Duluth 2, Minnesota.

The said District 2 is a labor union with a membership composed of licensed marine engineers and has a number of officers, representatives, employees and places of business in various locations; it now has several representatives, agents and employees engaged in picketing activities at the ore loading docks of the Great Northern Railway Company at Superior, Wisconsin directed against plaintiffs' vessels which use these docks for loading cargos.

III.

That effective October 4, 1961, plaintiff The Hanna Mining Company, for itself and as agent on behalf of the other plaintiffs as their vessel operating agent, entered into a labor agreement with defendant District 2, Marine Engineers Beneficial Association, governing the wages, working conditions and terms of employment of licensed marine engineers employed aboard plaintiffs' vessels; that the said labor agreement terminated on July 15, 1962; that during negotiations for a new labor agreement between representatives of plaintiff The Hanna Mining Company and said District 2 in August 1962, a vast majority of the said engineers signed petitions stating that they do not [fol. 72] want to be represented for collective bargaining by said District 2 and forwarded such petitions to plaintiff The Hanna Mining Company; that plaintiffs immediately notified said District 2 that said written petitions had been received revoking the authority of said District 2 to act as the collective bargaining agent or union representative for the said engineers; and that any further collective bargaining negotiations should be suspended and held in abeyance until said District 2 established its legal right to represent the said engineers, or a majority of them, preferably by means of a secret ballot election conducted by an impartial third party which would provide the said engineers an opportunity to vote for or against representation by said District 2.

IV.

That defendant District 2 refused to agree to any election by an impartial third party to resolve the said question of representation and determine its majority status; that defendant District 2 demanded a continuation of collective bargaining negotiations and the execution of a labor agreement binding the said engineers and governing their wages, working conditions and all terms of employment including compulsory union membership notwithstanding [fol. 73] the petitions from the said engineers; that upon the refusal of the plaintiffs to accede to these demands, said District 2 and its officers, agents, employees, members and representatives commenced picketing plaintiffs' vessels on September 12, 1962, in Superior, Wisconsin, and many other Great Lakes ports with the unlawful objectives of forcing, coercing and compelling plaintiffs to recognize and bargain with the defendants as the union representative of the said engineers and forcing, coercing and compelling the said engineers to join, accept and select the said District 2 as their collective bargaining representative without any opportunity to determine whether or not defendant labor union represented a majority of the said engineers by means of a properly conducted election; that defendant District 2 and its officers, employees, agents and representatives continued picketing plaintiffs' vessels until December 1962 when Great Lakes navigation ceased for the winter; that such picketing was resumed in the latter part of April 1963 in Superior, Wisconsin at the commencement of navigation with the same unlawful objectives and such picketing is continuing; and that none of the said engineers employed on plaintiffs' vessels have participated in any of these picketing activities and have continued working steadily [fol. 74] without any work stoppages of any kind on plaintiffs' vessels.

V.

That plaintiffs filed a petition with the Regional Director of the National Labor Relations Board in Cleveland, Ohio,

on September 12, 1962, amended September 17, 1962, Case 8-RM-308, requesting a representation election to determine whether or not defendant labor union represented a majority of the said engineers; that the said Regional Director dismissed the petition on September 25, 1962, upon a finding that the said engineers were supervisors excluded from the coverage of the National Labor Relations Act and therefore not within the jurisdiction of the said Board; that said ruling of the Regional Director was affirmed upon appeal by the National Labor Relations Board, Washington, D. C. on a finding that the said engineers were supervisors to whom the National Labor Relations Act does not apply.

VI.

That on September 15, 1962, plaintiffs filed charges against defendant District 2 with the Regional Director of the National Labor Relations Board in Minneapolis, Minnesota, for a possible violation of Section 8 (b) (4) [fol. 75] of the National Labor Relations Act for picketing activities creating work stoppages delaying the unloading of cargo from the SS. Joseph H. Thompson, one of plaintiffs' vessels, at Duluth, Minnesota; that said charges were dismissed on October 22, 1962; and that said dismissal was affirmed upon appeal by the National Labor Relations Board at Washington, D. C. on December 10, 1962.

VII.

That on September 27, 1962, plaintiffs filed a charge against defendant District 2 with the Regional Director of the National Labor Relations Board in Cleveland, Ohio, for a violation of Section 8 (b) (7) of the National Labor Relations Act for continued picketing of plaintiffs' vessels with the unlawful object of forcing or requiring the plaintiffs to recognize or bargain with defendant District 2 as the representative of said engineers, or forcing or requiring the said engineers to accept or select defendant District 2 as their collective bargaining representative; that said Re-

gional Director dismissed plaintiffs' charges on October 5, 1962; that plaintiffs immediately appealed the said dismissal to the General Counsel of the National Labor Relations Board in Washington, D. C.; that said dismissal was affirmed by the General Counsel by letters dated November [fol. 76] 26, 1962 and December 21, 1962, upon the ground that the said engineers are supervisors over whom the said Board has no jurisdiction because the National Labor Relations Act specifically excludes supervisory personnel from its provisions; and that the administrative dismissal of the plaintiffs' charges was in accordance with the established practice of the said Board.

VIII.

That unless enjoined and restrained from continuing such picketing activities, defendant District 2, Marine Engineers Beneficial Association, AFL-CIO, and its officers, agents, members, employees and affiliated labor unions will continue to picket plaintiffs' vessels with the unlawful objectives of coercing, forcing and compelling plaintiffs to recognize and execute a labor contract with the said District 2 as the purported representative of the said engineers and to force the said engineers to accept and select said District 2 as the collective bargaining agent and union representative for said engineers; that the said picketing has had and will continue to have the harmful effect of causing work stoppages among individuals employed by other employers and of preventing harbor tugs from rendering [fol. 77] towage services, all of which delay and endanger plaintiffs' vessels, thus inflicting economic losses to plaintiffs and causing hazards to such vessels and their crews because dock workers, tug crews and other individuals employed by other employers decline to cross picket lines or are caused to refuse to perform services for plaintiffs as a result of the said picketing; that plaintiffs have suffered irreparable damage; that plaintiffs have no adequate remedy at law; and that the National Labor Relations Board administering the federal National Labor Relations Act

and amendments thereto has declined and refused to take any jurisdiction over this controversy because the said Board has ruled that the licensed marine engineers employed aboard plaintiffs' vessels are supervisors to whom the said Act does not apply.

IX.

That none of the said engineers have participated in any of the picketing activities which have been and are being conducted by defendants; that the said engineers have remained aboard plaintiffs' vessels performing their regular duties without any work stoppages or interruptions despite the picketing activities conducted by defendants; that no labor dispute exists between the plaintiffs and the [fol. 78] said engineers; and that all picketing by defendants has been conducted by persons who are not employed by the plaintiffs.

Wherefore, the plaintiffs pray for a temporary restraining order enjoining defendants and each of them, their officers, agents, members, employees, affiliated unions and all other persons or organizations acting in concert or conspiracy with defendants from:

1. Picketing, patrolling or bannering in any way the vessels of the plaintiffs or the docks where said vessels are located, or authorizing, directing, aiding, abetting or otherwise encouraging or participating in such picketing, patrolling or bannering;

2. Seeking to compel plaintiffs to employ only members of defendant labor union, or seeking to compel plaintiffs to coerce their employees to become members of defendant labor union, or to join or maintain membership therein as a condition of employment aboard plaintiffs' vessels;

3. Threatening, intimidating, interfering with or coercing plaintiffs, licensed marine engineers employed by plaintiffs, other employees of the plaintiffs, or any individuals, organizations, corporations, partnerships, by threats of

[fol. 79] trouble, physical violence, or other discriminatory practices;

4. All other acts or measures seeking to or attempting to carry out any of the foregoing; and that upon final hearing, the said injunction shall be made perpetual and for such other relief as, in equity, plaintiffs may be found to be entitled, together with recovery of costs herein.

Johnson, Fritschler, Barstow & Witkin, By Barney B. Barstow, 304-308 Telegram Building, Superior, Wisconsin, Attorneys for the Plaintiffs.

Of Counsel:

Montague, Applequist, Lyons, Nolan, Donovan and Knetsch, 1000 Alworth Building, Duluth, Minnesota;

McCreary, Hinslea & Ray, 860 Union Commerce Building, Cleveland, Ohio.

IN THE CIRCUIT COURT FOR DOUGLAS COUNTY, WISCONSIN

## Exhibits

EXCERPT FROM CHARGE FILED BY THE HANNA MINING COMPANY WITH NATIONAL LABOR RELATIONS BOARD DATED SEPTEMBER 15, 1962.

The above named labor organizations and their agents [fol. 80] and representatives on or about September 12, 1962, and thereafter, induced and encouraged employees and individuals employed by the North Western-Hanna Fuel Company at Duluth, Minnesota, to engage in a strike or a concerted refusal in the course of their employment to unload vessels operated by The Hanna Mining Company, for itself and as agent for the owners of such vessels, or to perform any services with respect to said vessels, with the object of forcing or requiring North Western-Hanna Fuel Company to cease doing business with The Hanna Mining Company and/or for the purpose of forcing or requiring The Hanna Mining Company to recognize or bargain with said labor organizations as the representative of

its employees, although such labor organizations have not been certified as the representative of such employees under the provisions of Section 9 of the Act.

EXCERPT FROM CHARGE FILED BY THE HANNA MINING COMPANY WITH NATIONAL LABOR RELATIONS BOARD DATED SEPTEMBER 27, 1962.

The above named labor organizations and/or their agents or representatives on or about September 12, 1962, and continuing thereafter, have picketed or caused to be picketed, and threatened to picket or cause to be picketed, [fol. 81] vessels operated by The Hannan Mining Company for itself and as agent for the owners of such vessels with the object of forcing or requiring The Hanna Mining Company to recognize or bargain with District 2, Marine Engineers Beneficial Association, AFL-CIO, a labor organization, as the representative of its employees or forcing or requiring the employees of The Hanna Mining Company to accept or select said District 2, Marine Engineers Beneficial Association, AFL-CIO, as their collective bargaining representative although said District 2, Marine Engineers Beneficial Association, AFL-CIO, has not been certified as the representative of such employees under the provisions of Section 9 of the Act and has not filed a petition under Section 9 (c) of the Act. By these and other actions the aforesaid labor organizations or either of them have committed unfair labor practices under the National Labor Relations Act.

BRIEF SUBMITTED IN BEHALF OF NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION AND DISTRICT 2, MEBA TO GENERAL COUNSEL, NATIONAL LABOR RELATONS BOARD.

In opposition to Request for Review by the General Counsel of Refusal to Issue Complaint and Dismissal of Charge by the Regional Director, Eighth Region, on behalf of The Hanna Mining Company.

[fol. 82] On behalf of the National MEBA and District 2, MEBA, we respectfully request that the Request for Re-

view by the General Counsel filed in the above matter be dismissed.

(1) On September 5, 1962, the Hanna Mining Company filed charges against the National MEBA and District 2, MEBA, alleging violations of Section 8 (b) (i) (ii) (A) and (B) of the Act. (Case No. 18-CC-127)

These charges are presently under consideration by the Regional Director of the Eighteenth Region of the Board.

(2) On September 12, 1962, The Hanna Mining Company filed in the Eighth Region of the Board a petition for an investigation and certification for representatives under Section 9 (c) of the National Labor Relations Act with respect to the licensed marine engineers employed by the Company on its Great Lakes vessels. (Case No. 8-RM-308)

This petition was dismissed on September 25, 1962 by the Regional Director on the specific ground that the workers in the proposed unit are not "employees" within the meaning of Section 2 (3) of the Act, being employed as "supervisors" as defined in Section 2 (11) of the Act.

[fol. 83] The Company took an appeal from such decision. On behalf of the National MEBA and District 2, MEBA, there has been filed with the Board a letter in opposition. This appeal is still pending.

(3) On September 27, 1962, The Hanna Mining Company on the basis of the same set of facts involved in the above noted Case No. 18-CC-127, namely, an alleged claim for representation by MEBA in behalf of the licensed marine engineers employed by Hanna Mining Company, filed another charge against the National MEBA and District 2, MEBA, alleging a violation of Section 8 (b) (7) of the Act. (Case No. 8-CP-43). These charges were filed in the Eighth Regional office of the Board.

On October 5, 1962, the Regional Director dismissed the charges.

The Request for Review presented herein to the General Counsel reflects a complete misunderstanding of the decisions which have been made by the Board and Regional

Directors with respect to two separate and distinct issues: First, whether "employees" are involved where such factor is decisive and Second, whether a labor organization is involved in the case of alleged violation of Section 8 (b) (4) of the Act. The opinion of the U. S. Supreme Court in [fol. 84] MEBA v. Interlake Steamship Co., 370 U. S. 173 does not conflict with such previous decisions of the Board.

As long as the Board's determination in Globe Steamship Company, 85 NLRB 475, remains unreversed, licensed marine engineers, as those employed by Hanna Mining and represented by MEBA, are deemed to be "supervisors" and not "employees" as these terms are defined in the Act.

Accordingly, the Regional Director was correct in dismissing the Petition for an election in Case No. 8-RM-308, since only "supervisors" were involved.

Similarly, the Regional Director was correct in dismissing the charge involved in the instant appeal which alleges a violation of Section 8 (b) (7) since only "supervisors" were involved. For this provision of the Act to be applicable, the labor organization must be purporting to represent "employees" of the employer. This factor being absent, the charge had to be dismissed.

Incidentally, if the Board will decide that under Section 8 (b) (7), petitions for elections among licensed marine engineers, though "supervisors," will be entertained and processed, the MEBA will be deeply appreciative and will [fol. 85] immediately utilize such machinery.

It is under Section 8 (b) (4) of the Act, where certain prohibitions have been imposed upon "labor organizations," that the Board has held, regardless of the character of the primary workers involved in the immediate dispute, if the activities of the labor organization fall within the prescribed area involving secondary employees, such Section is applicable. And the Board has held that a union is a labor organization where it has at least 2 or more members who are "employees" tho not necessarily involved in the immediate dispute. See MEBA v. NLRB, 274 F2d 167.

This is the situation under consideration by the Regional Director in Case 18-CC-127.

In the case of MEBA v. Interlake Steamship Company case, supra, the Supreme Court merely affirmed its preemption doctrine, since the complaint embraced a possible violation of Section 8 (b) (4) of the Labor Act and reversed the State Court's assumption of jurisdiction.

The Request for Review should therefore be dismissed.

Respectfully submitted,

LEE PRESSMAN
Lee Pressman
Attorney for National MEBA and
District 2, MEBA, (AFL-CIO)
50 Broadway
New York City, N. Y.

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[fol. 86]

NATIONAL LABOR RELATIONS BOARD
EIGHTH REGION
720 Bulkley Building,
1501 Euclid Avenue
Cleveland 15, Ohio

Telephone MAin 1-4465
September 25, 1962

The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

Re: The Hanna Mining Company
Case No. 8-RM-308

Gentlemen:

The above-captioned case, petitioning for an investigation and certification of representatives under Section 9 (c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, it appears that, because the employees in the proposed unit are not employees within the meaning of Section 2 (3) of the Act, being employed as supervisors as defined in Section 2 (11) of the Act, further proceedings are not warranted at this time. I am, therefore, dismissing the petition in this matter.

[fol. 87] Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing a request for such a review with the National Labor Relations Board, Washington, 25, D. C. A copy of such request for review must be served upon each of the other parties to the proceeding, including the undersigned. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request (original and six copies) should be filed within ten (10) days from the date of receipt of this letter, except that the Board may, upon good cause shown, grant special permission for a longer period within which to file.

Very truly yours,

PHILIP FUSCO
Regional Director

cc: National Labor Relations Board,
Washington 25, D. C.
Marine Engineers Beneficial Ass'n.,
Dist. 2, AFL-CIO,
c/o 120 Summit St., Toledo, O.

John Hanninen, Atty.,
Union Commerce Bldg.,
Cleveland 14, O.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[fol. 88]

NATIONAL LABOR RELATIONS BOARD
EIGHTEENTH REGION
316 Federal Building,
110 South Fourth Street
Minneapolis 1, Minnesota

Telephone 339-0112
October 16, 1962

The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

Attention: Mr. R. J. McDade
Director of Industrial Relations

Re: National Marine Engineers Beneficial Association, AFL-CIO, and District 2 Marine Engineers Beneficial Association, AFL-CIO (The Hanna Mining Company)
Case No. 18-CC-127

Gentlemen:

The charge which you filed in this matter has been investigated and the results carefully considered. As a consequence, it is our conclusion that no violation of Section 8 (b) (4) (i) (ii) (A) or (B) of the Act is indicated.

[fol. 89] In the first place, allegation of violation of 8 (b) (4) (i) (ii) (A) was undoubtedly inadvertent. As to 8 (b) (4) (i) (ii) (B), the investigation indicates that the picketing conforms to the criteria set forth in the Moore Dry Dock decision, and further that the inducement of the employees of secondary employers was limited to inducing them to cease performing services aboard the ship. We can not regard the removal of the employees from the ship since it remained the situs of the dispute.

We must therefore request that the charge be withdrawn and for this purpose the appropriate forms are enclosed. In the event that the withdrawal is not received by October 24, it will be necessary to dismiss the charge.

Very truly yours,

CLARENCE A. METER
Clarence A. Meter
Regional Attorney

Enclosures

cc: John H. Hanninen, Attorney
860 Union Commerce Bldg.
Cleveland 14, Ohio

Harry C. Applequist, Attorney
One Thousand Alworth Bldg.
Duluth 2, Minnesota

[fol. 90]

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NATIONAL LABOR RELATIONS BOARD

EIGHTEENTH REGION
316 Federal Building,
110 South Fourth Street
Minneapolis 1, Minnesota

Telephone 339-0112
October 22, 1962

The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

Attention: Mr. Robert J. McDade
Director of Industrial Relations

Re: International Longshoremen's Association, AFL-CIO, Local 1328, and/or Local 1343, I. L. A., AFL-CIO, Bulk Cargo Dock Workers (The Hanna Mining Company)

Case No. 18-CC-126

Gentlemen:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it appears for reasons expressed in Attorney Meter's letter of October 16, 1962, [fol. 91] further proceedings are not warranted at this time. I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19), you may obtain a review of this action by filing a request for such review with the General Counsel of the National Labor Relations Board, Washington 25, D. C., and a copy with me. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the General Counsel in Washington, D. C., by the close of business on November 5, 1962. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request should be submitted to me.

Very truly yours,

C. Edward Knapp
C. Edward Knapp
Regional Director

Certified
R/R/R

Cc: See page 2

[fol. 92]
NATIONAL LABOR RELATIONS BOARD

EIGHTEENTH REGION
316 Federal Building,
110 South Fourth Street
Minneapolis 1, Minnesota

Telephone 339-0112

October 22, 1962

The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

Attention: Mr. R. J. McDade,
Dir. of Indus. Rel.

Re: National Marine Engineers Beneficial Association, AFL-CIO, and District 2, Marine Engineers Beneficial Association, AFL-CIO (The Hanna Mining Company)

Case No. 18-CC-127

Gentlemen:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it appears for reasons [fol. 93] expressed in Attorney Meter's letter of October 16, 1962, further proceedings are not warranted at this time. I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19), you may obtain a review of this action by filing a request for such review with the General Counsel of the National Labor Relations Board, Washington 25, D. C., and a copy with me. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be

received by the General Counsel in Washington, D. C., by the close of business on November 5, 1962. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request should be submitted to me.

Very truly yours,

C. EDWARD KNAPP
C. Edward Knapp
Regional Director

See page 2 for cc:

Certified, R/R/R

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[fol. 94]
NATIONAL LABOR RELATIONS BOARD

EIGHTEENTH REGION
316 Federal Building,
110 South Fourth Street
Minneapolis 1, Minnesota

Telephone 339-0112

October 16, 1962

The Hanna Mining Company
1300 Leader Building
Cleveland 14, Ohio

Attention: Mr. R. J. McDade
Director of Industrial Relations

Re: International Longshoremen's Association, AFL-CIO, Local 1328, and/or Local 1343, I. L. A., AFL-CIO, Bulk Cargo Dock Workers
(The Hanna Mining Company)

Case No. 18-CC-126

Gentlemen:

We have completed our investigation of this charge and regret to advise you that our conclusion is that no violation of Section 8 (b) (4) (i) (ii) (A) or (B) has occurred.

[fol. 95] As you realize, the charge, through inadvertence, alleged a violation of 8 (b) (4) (i) (ii) (A). With respect to the violation of 8 (b) (4) (i) (ii) (B), the evidence as to the conduct and actions of representatives of the charged union indicates that there were merely requests to honor the primary picket line of another labor organization, which requests were of the nature which the Board and the Courts have found privileged in such cases as Milwaukee Plywood Company, 126 NLRB affd. 285 F. 2d 325 (C. A. 7).

We must therefore request that the charge be withdrawn and for this purpose the appropriate forms are enclosed. In the event that the withdrawal is not received by October 24, it will be necessary to dismiss the charge.

Very truly yours,

CLARENCE A. METER
Clarence A. Meter
Regional Attorney

Enclosures

cc: John H. Hanninen, Attorney
860 Union Commerce Bldg.
Cleveland 14, Ohio

Harry C. Applequist, Attorney
One Thousand Alworth Bldg.
Duluth 2, Minnesota

[fol. 104]

IN THE SUPREME COURT OF WISCONSIN

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THE HANNA MINING COMPANY, NATIONAL STEEL CORPORATION, HANSAND STEAMSHIP CORPORATION and THE HANNA FURNACE CORPORATION, Appellants,

v.

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, Respondents.

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JUDGMENT—April 13, 1964

This cause came on to be heard on appeal from the order of the Circuit Court for Douglas County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the Circuit Court for Douglas County, in this cause, be, and the same is hereby affirmed with costs against the said appellants.

Chief Justice Currie took no part.

[fol. 105] [File endorsement omitted]

Notice

This opinion is subject to further editing and modification. The official version will appear in the bound volume of the Wisconsin Reports.

In the Supreme Court of Wisconsin

No. 169

August Term, 1963

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The Hanna Mining Co., et al., Appellants,

v.

District 2, Marine Engineers Beneficial Association, AFL-CIO, Respondent.

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Appeal from an order of the circuit court for Douglas county: Allen Kinney, Circuit Judge. Affirmed.

Opinion—April 13, 1964

Action by The Hanna Mining Company, National Steel Corporation, Hansand Steamship Corporation and The Hanna Furnace Corporation, against District 2, Marine Engineers Beneficial Association, AFL-CIO (hereinafter called MEBA), and several of its officers, to enjoin defendants, agents, officers and members of MEBA, and others acting in concert with them from picketing plaintiffs' vessels and the docks where they are located.

The action was commenced June 25, 1963, by service of a summons, complaint, order to show cause and restraining order, and supporting affidavits. Defendants appeared specially and moved for dismissal on the ground (not in-[fol. 106] volved on this appeal) of lack of jurisdiction over the persons of defendants and on the ground that "The

Court lacks jurisdiction over the subject matter in that the National Labor Relations Board has exclusive jurisdiction of the subject matter herein." Affidavits supporting the motion were also filed. On July 15, 1963, after hearing on the motion, but before decision thereof, an amended complaint was served.

On July 26, 1963, the circuit court entered an order dismissing the complaint on the ground of lack of jurisdiction because the matter is within the jurisdiction of the NLRB, and vacating the restraining order. Plaintiffs appealed. Various proceedings were later had, not directly involved on this appeal, under which the restraining order was continued in effect pending the appeal, but was vacated October 30, 1963, upon posting of bond by defendants.

The following facts appear, in substance, from the amended complaint and affidavits on file:

Plaintiff corporations own and operate vessels on the Great Lakes transporting cargoes in interstate and foreign commerce. One of the plaintiffs, The Hanna Mining Company, acts as the operating agent for all of the plaintiffs' vessels, which are operated as one integrated fleet. The defendant association (MEBA) is a labor organization with a membership composed of licensed marine engineers.

Effective October 4, 1961, Hanna Mining entered into a labor agreement with MEBA governing the terms of employment of licensed marine engineers employed aboard plaintiffs' vessels, and this agreement terminated July 15, [fol. 107] 1962. During subsequent negotiations a majority of such engineers notified Hanna Mining that they did not want to be represented by MEBA and Hanna Mining took the position that further negotiations with MEBA must be suspended until a majority voted for MEBA in a secret ballot election.

Plaintiffs alleged in the amended complaint that on September 12, 1962, MEBA commenced picketing plaintiffs' vessels in Superior, Wisconsin, and other ports "with the unlawful objectives of forcing, coercing and compelling plaintiffs to recognize and bargain with [MEBA] as the union representative of the said engineers and forcing,

coercing and compelling the said engineers to join, accept and select [MEBA] as their collective bargaining representative without any opportunity to determine whether or not [MEBA] represented a majority of the said engineers by means of a properly conducted election. . . ." They alleged that the picketing continued until the close of the 1962 navigation season, and was resumed at the commencement of navigation in April, 1963.

Plaintiffs also alleged in the amended complaint "that the said picketing has had and will continue to have the harmful effect of causing work stoppages among individuals employed by other employers and of preventing harbor tugs from rendering towage services, all of which delay and endanger plaintiffs' vessels, thus inflicting economic losses to plaintiffs and causing hazards to such vessels and their crews because dock workers, tug crews and other individuals employed by other employers decline to cross picket lines or are caused to refuse to perform services for plaintiffs as a result of the said picketing. . . ."

On September 12, 1962, Hanna Mining filed a petition with the regional director of NLRB at Cleveland, Ohio, requesting a representation election with respect to its marine engineers. The regional director dismissed the petition, stating that: "As a result of the investigation, it appears that, because the employees in the proposed unit are not employees within the meaning of Section 2(3) of the Act, being employed as supervisors as defined in Section 2(11) of the Act, further proceedings are not warranted at this time."

[fol. 108] Upon request for review, the NLRB "concluded that, as the Appellant's appeal makes no affirmative claim that a majority of the 'employees' as distinguished from 'supervisors' are sought to be represented in an appropriate unit and as a unit of supervisors is otherwise inappropriate, no question concerning representation in an appropriate unit exists . . .

"Moreover, the apparent request of the Appellant for a declaratory judgment by the Board cannot be considered

in an original representation proceeding . . . Accordingly, the Regional Director's dismissal of the petition was warranted."

On September 15, 1962, Hanna Mining filed a charge with the regional director of NLRB at Minneapolis, Minnesota, claiming that MEBA had engaged in illegal secondary boycott activity which would be an unfair labor practice under sec. 8(b)(4) of NLRA by inducing and encouraging individuals employed by the North Western Hanna Fuel Company at Duluth, to engage in a boycott of one of these vessels. The regional director refused to issue a complaint, stating that investigation indicated that the inducement of the employees of secondary employers was limited to inducing them to cease performing services aboard the ship.

Upon appeal, the general counsel of NLRB sustained the regional director's ruling, saying:

". . . It was concluded that the evidence was insufficient to establish that either respondent engaged in unlawful secondary activity, as alleged. In this connection, the evidence revealed that the picketing by MEBA at the common situs herein conformed to *Moore Dry Dock* standards (92 NLRB 547), notwithstanding that picketing continued after the vessel was abandoned (cf. *Ingram Barge Co.*, 136 NLRB No. 112), and that oral appeal by MEBA pickets to personnel of the neutral employer were for action solely with respect to the primary situs and did not constitute unlawful activity within the meaning of Section 8(b)(4) of the Act. Cf. *Pure Oil Company*, 84 NLRB 315. Furthermore, MEBA's activity at other sites did not evince an unlawful object on the part of the Union inconsistent with the ostensibly primary object of the picketing at the situs of the dispute. Nor did the totality of its conduct establish the unlawfulness of its activity."

[fol. 109] On September 27, 1962, Hanna Mining filed a charge with the regional director of NLRB at Cleveland, Ohio, claiming that MEBA had engaged in an unfair labor practice under sec. 8(b)(7) of NLRA by picketing the ves-

sels with the unlawful object of forcing plaintiffs to bargain with MEBA or forcing the engineers to accept MEBA as their representative. The regional director refused to issue a complaint because "there is insufficient evidence that there was picketing of, or a threat to picket, an employer for an object proscribed by Section 8(b)(7) of the Act . . ."

Upon appeal, the general counsel sustained the ruling of the regional director, and explained: "Our disposition of this case was predicated solely on our conclusion that the supervisory status of the licensed engineers precluded a finding that the Union's picketing and other activity was for an object proscribed by Section 8(b)(7) of the Act . . ."

Counsel for MEBA filed an affidavit establishing that NLRB has ruled in other cases that MEBA is a labor organization within the meaning of NLRA because some of its members are not supervisors and are employees within the meaning of NLRA.

No claim is made that the picketing involved or threatened violence.

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[fol. 110] FAIRCHILD, J. The gist of plaintiffs' claim, upon the merits, appears to be that MEBA's picketing, although non-violent, is for an unlawful purpose, and plaintiffs are therefore entitled to an injunction. Allegedly, MEBA is attempting to coerce plaintiffs to bargain with MEBA as the representative of the marine engineers, against the wishes of a majority of the latter. The picketing is allegedly intended to induce others to refuse to perform essential services for plaintiffs' vessels, in order to present plaintiffs with the choice between suffering substantial loss and unlawfully bargaining with MEBA. Under a similar theory, this court affirmed an injunction against otherwise peaceful picketing in *Vogt, Inc.* v. *International Brotherhood.*[1]

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[1] (1956), 270 Wis. 315, 71 N. W. (2d) 359, affirmed in *Teamsters Union* v. *Vogt, Inc.* (1957), 354 U. S. 284, 77 Sup. Ct. 1166, 1 L. Ed. (2d) 1347.

Because of the nature of plaintiffs' business, the effect of disruptions therein upon interstate and foreign commerce is obvious. Plaintiffs are employers within the meaning of NLRA,[2] and their nonsupervisory personnel are employees within its meaning. MEBA on the other hand has been held by NLRB to be a labor organization within the meaning of NLRA because some of the members of MEBA are employees as defined in NLRA.[3] Thus the question immediately arises whether a state court has any jurisdiction to deal with the merits of the matter.

The general rule (in the absence of mass picketing, violence, or overt threats of violence[4]) and some of the considerations upon which the rule is based, have been laid down by the supreme court of the United States in *San* [fol. 111] *Diego Unions* v. *Garmon*[5] as follows:

"At times it has not been clear whether the particular activity regulated by the States was governed by sec. 7 or sec. 8 or was, perhaps, outside both these sections. But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board. What is outside the scope of this Court's authority cannot remain within a State's power and state jurisdiction too must yield to the exclusive primary competence of the Board.

"...

"To require the States to yield to the primary jurisdiction of the National Board does not ensure Board adjudication of the status of a disputed activity. If the Board

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[2] 29 USCA sec. 141 ff.

[3] See *Marine Engineers* v. *Interlake Co.* (1962), 370 U. S. 173, 82 Sup. Ct. 1237, 8 L. Ed. (2d) 418.

[4] *Auto Workers* v. *Wisconsin Board* (1956), 351 U. S. 266, 76 Sup. Ct. 794, 100 L. Ed. 1162; *Youngdahl* v. *Rainfair, Inc.* (1957), 355 U. S. 131, 78 Sup. Ct. 206, 2 L. Ed. (2d) 151.

[5] (1959), 359 U. S. 236, 244, 245, 246, 79 Sup. Ct. 773, 3 L. Ed. (2d) 775.

decides, subject to appropriate federal judicial review, that conduct is protected by sec. 7, or prohibited by sec. 8, then the matter is at an end, and the States are ousted of all jurisdiction. Or, the Board may decide that an activity is neither protected nor prohibited, and thereby raise the question whether such activity may be regulated by the States. However, the Board may also fail to determine the status of the disputed conduct by declining to assert jurisdiction, or by refusal of the General Counsel to file a charge, or by adopting some other disposition which does not define the nature of the activity with unclouded legal significance. This was the basic problem underlying our decision in *Guss* v. *Utah Labor Relations Board*, 353 U. S. 1. In that case we held that the failure of the National Labor Relations Board to assume jurisdiction did not leave the States free to regulate activities they would otherwise be precluded from regulating. It follows that the failure of the Board to define the legal significance under the Act of a particular activity does not give the States the power to act. In the absence of the Board's clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essentially undisputed facts, it is not for this Court to decide whether such activities are subject to state jurisdiction. The withdrawal of this narrow area from possible state activity follows from our decisions in *Weber* and *Guss*. The governing consideration is that to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy."

In later cases, the supreme court of the United States has held that state courts have no power to enjoin activity which is an arguable violation of sec. 8 (b) of the NLRA,[6] or is arguably protected by the NLRA.[7]

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[6] *Construction Laborers* v. *Curry* (1963), 371 U. S. 542, 546, 83 Sup. Ct. 531, 9 L. Ed. (2d) 514.

[7] *Liner* v. *Jafco, Inc.* (1964), 375 U. S. 301, 84 Sup. Ct. , 11 L. Ed. (2d) 347. See *Local 248, U. A., A. & A. I. W.* v. *Wisconsin*

[fol. 112] The *Garmon* rule has been recently applied by the supreme court of the United States to the question of whether an organization (MEBA, as it happens) is a labor organization under NLRA. Where MEBA's conduct was of a kind arguably prohibited by NLRA if MEBA were a labor organization under NLRA, a state court must decline to assert jurisdiction over the activity as soon as the evidence before it is sufficient to show that MEBA is "arguably a 'labor organization.'"[8]

Picketing of a type commonly referred to as recognition picketing is made an unfair labor practice by sec. 8 (b)(7) of NLRA, but such is not an unfair labor practice in the present case if the objects of the picketing, *viz*: the plaintiffs' marine engineers, are deemed supervisory personnel and thus are not employees within the meaning of NLRA. Sec. 8 (b)(4), however, prohibits secondary boycotting which occurs when a union directs pressure, whether by strike or otherwise, against an employer or other person with whom it has no dispute or grievance, for the purpose of persuading or coercing that neutral person to stop dealing with a primary party with whom the union has a dispute, as a means of exerting pressure on the primary party.[9] Sec. 8 (b)(4) of the NLRA provides as follows:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

[fol. 113] "(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or

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*E. R. Board* (1960), 11 Wis. (2d) 277, 105 N. W. (2d) 271, certiorari denied (1961), 365 U. S. 878, 81 Sup. Ct. 1028, 6 L. Ed. (2d) 190, and *Markham* v. *American Motors Corp.* (1964), 22 Wis. (2d) 680, 685, 126 N. W. (2d) 753, at 755.

[8] *Marine Engineers* v. *Interlake Co., supra,* p. 177, footnote 3.

[9] See CCH, Labor Law Reporter, para. 5220, p. 10,534 ff.

work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

"...

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided*, That nothing contained in the clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

"..."[10]

As seen from the foregoing there is or may be a common denominator between recognition picketing and secondary boycotting. In both coercion may be accompanied through the effect of the activity upon neutral third parties. Plaintiffs' claim that MEBA, considered as a labor organization, is coercing plaintiffs by inducing work stoppages among dock workers and tug crews, employed by others, arguably charges an unfair labor practice under sec. 8(b)(4)(B) of NLRA, relating to so-called secondary boycott. If the activity does not constitute a secondary boycott, the reason would seem to be that the activity was no more than "primary picketing," and apparently the regional director and general counsel were unconvinced that the activity went beyond primary picketing. It would seem to us, in [fol. 114] contemplation of the *Garmon* rule as stated by the supreme court, that the drawing of the distinction between a secondary boycott and primary picketing should

[10] 29 USCA, p. 54, sec. 158.

surely be performed by the NLRB. It may well be of significance also, that the activity considered by the general counsel took place in Duluth, Minnesota, in 1962, and the conduct which is made the basis for injunction occurred in Superior, Wisconsin, at later dates, and must at least differ in detail, if not in relevant substance.

If the picketing were deemed no more than primary, and if the marine engineers whom MEBA is seeking to represent were non-supervisory, plaintiffs' claim arguably charges an unfair labor practice under sec. 8(b)(7) of NLRA making it an unfair labor practice for a labor organization to picket an employer in order to force him to recognize it as the representative of employees for whom it has not been properly certified. Plaintiffs do not appear to claim that it is not arguable that the marine engineers are employees under the Act. Indeed they filed a charge on the basis (presumably) that they were employees, and are asking the state courts to proceed upon the general counsel's refusal to file a complaint.

Plaintiffs acknowledge the *Garmon* rule to the extent that a state agency or court has no jurisdiction over conduct arguably subject to NLRA until the NLRB has made a final determination that the conduct is not so subject. They stress the references in *Garmon* to the "exclusive primary competence" and "primary jurisdiction" [fol. 115] of the NLRB and the statement that the determination must be "left in the first instance" to NLRB, and to the statement in *Marine Engineers* v. *Interlake Co., supra* (p. 185), that "While the Board's decision is not the last word, it must assuredly be the first." They argue that the rules of the general counsel are determinations of the NLRB. Thus they assert that they have fulfilled the *Garmon* rule for avoidance of conflict between NLRB and courts and state agencies. Since, they would say, it has been finally determined that the conduct complained of is not an unfair labor practice, and presumably that such conduct is not protected by the Act because of the supervisory status of the people who are the object of MEBA's effort, the state is now free to apply its own law. By-

passing any difference between the conduct now alleged and the conduct complained of in Duluth, Minnesota, plaintiffs' logic seems clear, if they properly accord final legal significance to the acts of the general counsel. But we do not read *Garmon* as permitting this result.

We consider that where a state agency or court is asked to restrain picketing which affects interstate or foreign commerce, under circumstances not within recognized areas of concurrent jurisdiction such as violent conduct, such agency or court must decline jurisdiction unless it be demonstrated that the activity is neither prohibited nor protected by NLRA. Such demonstration can be accomplished only where undisputed facts show conclusively that NLRA does not prohibit nor protect the activity, or where "compelling precedent applied to essentially undisputed facts" so shows, or NLRB has clearly so determined. Such determination is not made, however, by NLRB's failure "to determine the status of the disputed conduct by declining to assert jurisdiction, or by refusal of the General Counsel to file a charge, [fol. 116] or by adopting some other disposition which does not define the nature of the activity with unclouded legal significance." [11]

We recognize that in the circumstances of this case, the rule produces something of a paradox. MEBA's alleged organizational picketing is unlawful under Wisconsin law, and is probably not protected by federal law because of the supervisory status of the maritime engineers. Such picketing cannot be prevented by NLRB procedure unless the NLRB general counsel has probable cause to believe that MEBA's conduct is a secondary boycott. Yet since such picketing approaches being unlawful under federal law as a secondary boycott, Wisconsin must decline to enjoin it. On the record before us we can perceive no escape consistent with the *Garmon* decision.

*By the Court.*—Order affirmed.

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[11] *San Diego Unions* v. *Garmon, supra,* footnote 5.

[fol. 117]

IN THE SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—June 30, 1964

The Court being now sufficiently advised of and concerning the motion of the said appellants for a rehearing in this cause, it is now here ordered that said motion be, and the same is hereby denied with costs against said appellants.

[fol. 118] Clerk's Certificate to foregoing transcript (omitted in printing).

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[fol. 119]

SUPREME COURT OF THE UNITED STATES

No. 527—October Term, 1964

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THE HANNA MINING COMPANY, et al., Petitioners,

v.

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, et al.

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ORDER ALLOWING CERTIORARI—March 15, 1965

The petition herein for a writ of certiorari to the Supreme Court of the State of Wisconsin, is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.